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"Alabama"

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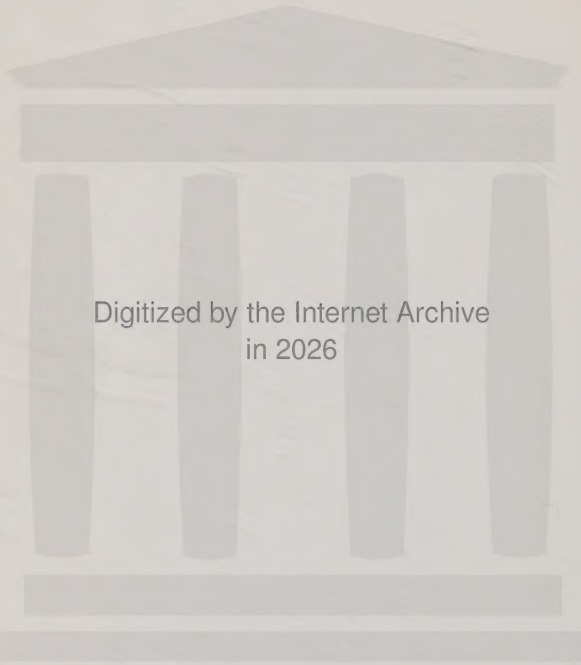


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AMERICAN OPINIONS

ON THE

“ALABAMA,”

AND OTHER

POLITICAL QUESTIONS.

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PREFACE.

THE author of the following pages has just completed a long tour of several months' duration in Great Britain and Ireland, and in most of the countries of Europe. Among his many chance companions of travel, his country and its institutions became the frequent topic of conversation. Various grave charges were brought against the people of the United States, and these charges were not always consistent with each other. It was said that we were not content with being Republicans ourselves, but were political propagandists, always waging a crusade of opinion upon other peoples' institutions; that being Republicans we ought never give the support of opinion to Imperialism in France or to monarchy anywhere; that we had unjustly aided to overthrow the late Mexican Empire; that we ought to condemn what was denounced as the tyrannous despotism of Prussia; that we ought to sustain by opinion the efforts to attain to German unity of nationality under the lead of Count Von Bismark; that our originally pure republican institutions had been corrupted by foreign immigration, which had also destroyed our unity of nationality; that although we had a free press ourselves, we approved oppressive restrictions upon the press in France and Germany; that our public men were corrupt, and our judges venal; that mob-law prevailed unchecked and unpunished in our country; that we had organized a

legislative war of labour upon capital, and yet wished to exclude the poor labourers of China from our country; and that our Government, having itself proposed a Treaty with the British Government by which all claims for violation of international neutrality during the late Civil War in America could have been amicably settled, had itself with bad faith repudiated the treaty. Almost everywhere it was taken for granted that the Government of the United States was a pure democracy, with machinery of the most simple sort, and in which the will of the majority received at once a free, unchecked, and absolute expression. To these charges and representations, the writer made such answers as seemed fitting, upon each occasion, and with such success, that the gentlemen to whom they were addressed, were pleased to say that a large class of readers in Europe would be glad to see the substance of them set forth in a succinct publication. Hence the origin of this essay, which was begun and carried forward to a point where it exacted demands beyond the leisure and strength of the writer. Its further preparation was then intermitted, and it would probably never have been published, except for the following considerations.

After all that has been said on the so-called *Alabama* question, two facts are very evident to a careful observer. —*First*: that the sentiments of the people of the United States on the subject have never fully reached the British Public. Senator Sumner's speech on the proposed Treaty has been criticised, reviewed, and triumphantly answered, it is said, but it is believed that it has never been published in Great Britain in any mode so as effectively to reach the public, either in full or in a satisfactory epitome. While of the other arguments used on each side of the

question in the People's Great Debate, there has been but little or no expression. *Secondly*: the British Public seem to honestly entertain impressions which are wholly unfounded, as to the nature of the proposed Treaty, the condition of the controversy, and the present attitude of the United States. Journalists, and other gentlemen, of undoubted candour and veracity, frequently say that "the British Government has done all it could to settle the controversy, and has failed." But it will be seen, by an examination of the Treaty itself, and from the declarations of the eminent British Statesman who assisted in preparing it, that it does not embrace, nor was it intended to embrace, any claim whatsoever of the Government of the United States upon the British Government, for its violation of international neutrality during our late Civil War. It is also said, that in the recent diplomatic correspondence between Mr. Fish, Secretary of State of the United States, and Lord Clarendon, the latter has presented "a complete refutation" of all the propositions of the American Secretary. Now, the principal proposition of Mr. Fish, and one which lies at the bottom of the whole controversy, is this: that the British Government cannot defend its violation of international neutrality, on the ground that its own municipal laws were defective: that it was bound to have domestic laws equal to its international duties. But to this proposition, Lord Clarendon, in his able forensic despatch, which is said to be a "complete refutation," makes no reply, nor even the slightest allusion. And, finally, it is commonly supposed that the demands for reparation by the United States commence with, and include, the consequences of a premature acknowledgement by the British Government

of the belligerency of the Confederate States: whereas the message of President Grant, and the despatches of Mr. Fish show, that the present Government of the United States not only has not made any such demands, but has expressly forbore to make them, even while insisting that such premature acknowledgement manifested an antecedent unfriendliness, which gave a specific colouring to the negligence of the British Government in the *Alabama* matter.

In the hope that the following pages may have some effect in producing a correct appreciation of the present condition of the controversy, they are given to the public. A third part has been partly prepared, to which what is now published, would form an appropriate introduction; but there is no present probability that it will ever be completed.

It is hardly necessary to add that the Author makes this publication entirely of his own motion, and without consulting any person whomsoever as to the propriety or expediency of doing so.

LANGHAM HOTEL,

London, January, 1870.

PART I.

THE UNITED STATES OF AMERICA.

It is not only convenient, but even necessary, to clear the way to our main topics, by discussing certain matters directly, rather than incidentally. To many this discussion may seem wholly or in a great part unnecessary. To others it will appear indispensable to a proper comprehension of the subject.

DEFINITIONS.

The term British is applied to the aggregate population of Great Britain and Ireland. The term Anglo-Saxon is rejected, as not being sufficiently descriptive. The term British American is applied to the aggregate population of the United States of America, which is assumed to be such either by origin or by political affiliation. The general term American is rejected as not being specific. The term British American, as above defined, is inaccurate, because it excludes other British races in North America; but, restricted by definition, must serve the present purpose. The thirty-eight million citizens of the United States do not yet possess a collective adjective which expresses their nationality.

POLITICS is the science of human government. INTERNATIONAL POLITICS concern the relations and conduct of nations towards

each other. MUNICIPAL POLITICS is the relation and conduct of a particular state towards its citizens or subjects, and their relation and conduct towards it. In a lower and restricted sense, the term politics is often applied to parties existing in a particular state, representing diversity of opinions upon political questions. The term will be here generally employed in its larger senses ; if in the other, the fact will be sufficiently obvious.

WHAT IS GOVERNMENT ?

Government is both a science and an art. It is a science, because the moral and economical principles upon which it ought to be administered are capable of being easily ascertained, and precisely stated. But in their practical application these propositions become complicated with various conditions, so that they lose their abstract character, and become concrete ; and then government becomes an art. These conditions are various : such as those of geography, climate, race, traditional habits, education, and the like. It will not be doubted, at this time, that the climate of Greece had much to do with the development of her peculiar institutions ; nor that the political character of England has been in a great measure the result of her insular position ; nor that the political necessities of France have for the last hundred years been greatly determined by populations outside of her borders.

THE REPUBLIC OF THE UNITED STATES OF AMERICA.

In the United States we are republicans, and we prefer that form of government. It is suited to our habits, for we have been republicans from the beginning. We were first planted there two hundred and fifty years ago, as a few scattered settlements or towns along the Atlantic coast, having no connection, and but little communication with each other. These

towns came to unite for purposes of defence against savages ; to form colonial legislatures, the germ of states, and then states to form the Federal Union. The *general* existing condition may be thus expressed : the lowest political division is the school district, whose inhabitants meet in general assembly, elect trustees, determine the questions of building school-houses, supplies for the schools, and similar matters, and levy taxes for these purposes. All these are executive and legislative acts. Several school districts combined form the town. This also has its annual legislative assembly, at which the town officers are elected, and other questions determined, such as the repair of the public roads, and the support of the poor. Several towns form the county, which has also its legislature, either elected by the whole body of the county, or composed of delegates from the several towns. To this body is confided the laying out of public roads, the first construction of public bridges, the charge and support of the county court-house, jail, workhouse, insane asylum, poor-house, and other kindred local matters. Above them all rises the State, whose legislature, of two separate bodies, is composed of delegates from towns, counties, divisions of counties, or from several counties united ; with a general power of municipal legislation, and a governor elected by universal suffrage. And above them all the FEDERAL UNION of the several States ; in which we present to the world the only national character we possess, and which has a national executive, judiciary and legislature, of two separate bodies, the Senate and House of Representatives ; and these are the only authorities through which we collect customs, coin money, make treaties, sustain an army and navy, declare war, and have international intercourse with other peoples.

THE GOVERNMENT OF THE UNITED STATES NOT DEMOCRATIC.

But our national government is not democratic. Many of the States are democratic, but the national government is arranged upon a more complicated basis. The representatives, in the House of Representatives in Congress, are elected in districts

upon a basis of population, so that States of large population like New York, Pennsylvania, and Ohio, have each between thirty and forty members, while States of small population, like Delaware, Rhode Island, and Oregon, have each but one member. But each State, however great or small its population, has two members of the Senate, so that the vote of the states of New-York, Pennsylvania and Ohio, with a population exceeding ten millions, may be neutralized in the Senate by the vote of the states of Delaware, Rhode Island and Oregon, which have not altogether a population of even a million. And these Senators are not chosen directly by the people by primary election, but by the Legislatures of their respective States, and therefore by secondary election. Nor is the President chosen directly by the people, nor does his election necessarily represent a majority of the votes cast directly by the people. The people of each State choose by universal suffrage a number of electors of President and Vice-President, equal to the number of its members of the House of Representatives in Congress *and* of its Senators. If the State of New York has thirty-four members of the House of Representatives, and two members of the Senate, it would therefore have thirty-six members of the Electoral College; while the State of Delaware, with one representative and two senators, has three electors. The State of New York has therefore less influence in the Electoral College than it would be entitled to on the basis of population; while the State of Delaware has three times as much influence as its population would entitle it to. And again, the President, it is obvious, may be elected by a minority of the popular votes. He may win enough electoral votes to secure his election in various States, each carried by small majorities in his favour, while other States may cast their votes against him by majorities thrice or four times as large. So that the only department of our government, based upon a direct democratic basis, is the House of Representatives. The Senate is not democratic, nor elected by primary election, but elected by secondary election on a purely artificial basis. The President is not elected by primary election, nor on a democratic basis, nor does his election necessarily express a majority of the popular vote. This short statement will possess no readers with an

adequate conception of the theory and frame of our government, but it will impress them all with an idea of its wonderful complexity. They will wonder that it could ever be set agoing, and, that being once set into operation, it did not stop of itself, or fly to pieces. But it has worked well for more than eighty years, and by reason of this very complexity. For this complexity is nothing more than a series of contrivances to *protect the minority against a hasty or passionate exercise of its power by a preponderating majority*. This proposition will bear some enlargement by way of illustration. We all know what atrocities were perpetrated by the democracies of Greece, where the absolute power was vested in a single popular body. We remember what sweeping, imprudent, passionate, violent acts of legislation were perpetrated by the legislatures of France when composed of only one body, which wielded the supreme executive and legislative power of the nation, and practically the judicial also, as it could enact retrospective as well as prospective laws. Montesquieu, a hundred years ago, gave this condition as the very definition of a despotism. Many of the most successful business men in the world have found it necessary to adopt fixed and arbitrary rules for their own conduct, in order to ensure a calm and deliberate judgment. Legislative bodies are like individuals in this, that under the impulse of fear, passion, and resentment, they lose their discretion, and act hastily and without judgment. Hence the necessity for a system of checks and balances which shall retard, if it does not prevent such a result. In some of the United States there was originally but one Legislative Body, but the experience of hasty legislation has uniformly led to the creation of a second house, based upon electoral districts different from the other. During our late civil war, and for some time afterwards, the whole legislative power of the nation was in the hands of a political party possessed of one but political sentiment, and some things were enacted which were wholly illegal, and others which are more the result of sentimentalism than of justice. The British House of Lords has been denounced as a most absurd and illogical institution, and no one has more keenly satirised its theoretical constitution than British writers, especially Thackeray. And yet all writers on

politics agree that among the primary objects of a good government is the protection of life, liberty, and *property*. The property of the British Islands is largely represented in the British House of Peers, and there embodies an interest sufficiently large to justify it in appealing to public opinion against what it considers imprudent, imperfect, or hasty legislation. The history of that body during the last forty years, enforced by a recent instance, shows that it still performs the office of a great balance-wheel in the constitution, and that it is as loth to oppose itself to the final, deliberate judgment of public opinion, as any sensible Prime Minister would be to strain the Constitution by creating a new batch of Peers to swamp the House of Lords. It is usual for profound politicians to work out to their probably practical result their proposed changes. If any one of those who propose to abolish the British House of Lords has demonstrated what the result would be if that were accomplished, and the British Peers permitted, with their vast landed property, to come into the House of Commons, and participate *directly* in the legislation of a single body possessing an absolute, unlimited and *unchecked* power of legislation, I confess I have never seen the demonstration. This subject of the representation and protection of minorities has engaged the attention of profound writers upon politics, some of whom, in the United States, have proposed that the legislature should be composed of two bodies; that the voters in each electoral district should elect three legislators, but vote for only *two* candidates; that the *two* who received the largest number of votes should become members of the first house of the legislature, and the *third* who received the next highest number should become a member of the second house. The first house would therefore represent the majority, and the second the minority of the people. The minority would enjoy the means of self-protection, and no legislation could be enacted except what was concurred in by both the majority and minority. This would be the best conceivable kind of legislation.

This proposition may be laid down as indisputable : there is no tyranny more insupportable than the unchecked power of an absolute majority.

THE VETO POWER OF THE PRESIDENT.

One of the most potent preventives of hasty legislation provided by the Constitution of the United States, is the power of the veto which the President possesses. By virtue of this power he may refuse to approve a law which has been enacted by both Houses of Congress, and return it with his objections to the Legislative Body in which it originated. If it is then re-enacted by a majority of two-thirds of all the members of both bodies, it becomes a law, notwithstanding the veto of the President. If it does not receive such a re-enactment, it fails to become a law. The exercise of the veto power by the President is of very common occurrence. No law has ever been enacted after being disapproved by the President, except during the presidency of the late President Johnson. In Great Britain the sovereign possesses the absolute power of the veto. But it has not been exercised for the last hundred and eighty years. If the British sovereign is at variance with the House of Commons, one appeal may be made to the people by dissolving the House, and ordering a new election. If not sustained by the people, the sovereign must yield. But if the President of the United States is at variance with Congress, and has a minority in either body sufficient to prevent his veto from being overridden by a majority of two-thirds, he can check the legislation of Congress until he retires from the Presidency at the end of his official term. Such are the strong restraints which the people of the United States have imposed upon themselves, by abdicating, for long periods, not only the executive power, but also the absolute power of legislation. But this has not been considered to be an evil in our polity. On the contrary, there is a strong feeling in favour of extending the term of the presidential office, which is now of only four years. For, as an able British writer has remarked, the people of the United States are always in a chronic condition of contested election. We elect a President, and as soon as he is inaugurated, the contest begins for the election of a successor to displace him at the end of four years, who shall be of a different political complexion. The political

elements are therefore always in commotion. The land has no peace ; and there is a temptation to make politics, not only a profession, which is well enough, but also a trade, which is a source of the worst corruption. Such are some of the excellencies and defects of our institutions, as we esteem them.

THE SYNTHETIC CHARACTER OF THE UNITED STATES.

Let it be borne in mind that these sparse settlements thus established on the Atlantic coast of North America, two hundred and fifty years ago, actually exercised, even if they did not legally possess, all the powers of sovereignty, as completely as did the *demos* at Athens. They enacted criminal and municipal laws; they punished crime, and inflicted the penalty of death. But when new necessities prompted them to unite with other like communities for purposes of common defence or security, each surrendered to the new organization that portion of its powers which was necessary for the new purpose. These new communities were at first overlooked, and therefore neglected by the mother-power in England ; but after a time she attempted to assume the control of them, and was at first met by passive resistance, and afterwards by the rebellion of 1776, which resulted in the independence of the colonies, and culminated in the Federal Union. How simple the formation of a national government, by the synthetic aggregation of such small, almost infinitesimal communities, advancing from the school district to the national form ; yet how complex this minute origin, distribution, and bestowal of executive, legislative, judicial, and ministerial functions ! This government, thus built up in stages of always three or four, and sometimes of five degrees, is perfectly understood by us, for it has been our habit, and we have known no other. The source of authority and the distribution of powers is always from below, ascending and concentrating upwards, and not, as in the monarchical theory, from a central point above, from which the rays diverge as they radiate downwards. We are republicans, then, under this form of government because we understand it; because we are accustomed to it;

because it has worked measureably well, and is endeared to us by the tradition of our fathers. But we do not therefore think that a republican government is either the best form of government in itself, or that it is well suited to all peoples. There was a time when we thought otherwise, but this complacent belief has received many rude shocks. The failure of every republic attempted in France, and the general collapse of all the Hispano-American republics has convinced us of our error. There was a time when we should have hailed the establishment of a republic among any civilized people, but we should now probably witness such an experiment with a kind of dread.

GOVERNMENTS MUST CONFORM TO NATIONAL HABITS.

The political habitudes of a people enter into its national life. They embody the traditional experience of the past; they are acted formulas of thought; they are a portion of the personal habits of every one of the people; they cannot be suddenly disturbed without a bewildering sense of change. A form of government is not like a garment, which can be changed at pleasure; it is more like the skin, which can be removed only by slow and almost imperceptible processes of constitutional change.

NO FORM OF GOVERNMENT EITHER GOOD OR BAD IN ITSELF.

As the science of government in its application to nations ceases to be an abstract science, but becomes a practical art by reason of the complication of divers conditions, it cannot be said that any form of government is, in and of itself, either good or bad. It is good, in any given case, just so far as it accomplishes the purposes of a good government; it is bad, in so far as it fails to accomplish them. The government of Belgium may be cited as an example of a good government, exercised over an intelligent, industrious and virtuous people. Does any thoughtful republican imagine that the institutions of

the United States could be successfully transported there? Holland was once a republic, and is perhaps essentially such to this day; but the kingly form of government was wisely introduced. If Russia had adopted even representative institutions twenty-five years ago, would serfdom be this day reckoned among the things of the past? Would she have enjoyed even internal tranquillity? Could she have advanced in her grand strides of civilization, as she has done, during the last hundred and fifty years, under any government except the autocratic? The government of her Hispano-American possessions by Spain, under the Bourbon dynasty, was no doubt vicious, in many respects, and oppressive to the native white races of those colonies; but it was nevertheless a vigorous government, stimulating to industry, and protective of life and property. Can it be doubted that it would have been better for those colonies in the aggregate, for the world, and for the cause of human progress and of free institutions, if they had remained under that dominion, bad as it was? In the aggregate, is the term used, for Chile no doubt presents the only, and a most notable exception. As republicans, we are ashamed of the antics which these simulated republics have performed in the name of republicanism, degrading the term, while they possessed no portion of the essence. When France entered upon her career of Revolution, and, after abolishing all oppressive feudal and seignorial privileges and imposts, declared all her citizens equal before the law; under a hereditary king, the depositary of the executive power, with whose sanction the nation enacted laws, whose person was inviolable, and upon whom the highest penalty that could be inflicted, even for treason, was dethronement, "*déchéance*," we felt that France had advanced far on the way to free institutions. But when we saw, soon afterwards, the kind-hearted but weak king put to death for an imputed crime, in defiance of the constitutional position which declared his person inviolable; the massacres of September; the Reign of Terror; the murder of Queen Marie Antoinette; and that most pitiful tragedy in all history, the slow assassination of the boy Dauphin in the Temple—all these atrocities perpetrated in the name of republicanism—we repudiated the imputation, and did not need the

lesson of the Spanish-American Republics to convince us that republicanism was something else than a mere form of expression. And after some further observation of the progress of events, we remembered the prediction of the eloquent Girondist Vergniaud: "the people will return to the kingly form of government, we imagined we were at Rome, while we were only at Paris." And that Danton, republican as he was, announced: "France does not love the Republic; she has the habitudes, the need of a monarchy; she will be brought back to it by her necessities." And when she did come back to a monarchy, and stamped it as her own by the creation of a new dynasty of entirely new blood, we were neither surprised nor discouraged for the advancement of liberal principles. We hoped that France had gained a new starting point of development.

PUBLIC OPINION OF THE WORLD

But there has arisen a new power in the world which is not limited by written constitutions, or by the enactment of Parliaments, and this is the power of Public Opinion. Its growth has been gradual, but solid, as is the condition of slow growths. More than a century ago, Peter the Great felt compelled to explain to the world the sudden and mysterious death of his eldest son, the heir to his throne. Even Frederick the Great, when he treacherously and forcibly occupied Silesia, at the beginning of the Seven Years' War, published a manifesto of falsehoods to justify the act. The United States of America, in their Declaration of Independence, in 1776, stated their grievances, and appealed to the judgment of mankind. Even the Allies, who combined to put down Napoleon I. submitted themselves to the judgment of the world and of posterity. The Emperor Napoleon III. has set an example to sovereigns of plain talking on those political subjects which are in every one's thoughts, which other monarchs and statesmen are rapidly coming to imitate. And this public opinion is not only becoming omnipotent, but it is a sound public opinion, based upon principles of morality. Nations may go astray, and

commit rash and oppressive acts, but their second-thought has an inevitable tendency to result in a sound public opinion. In our late civil war, for example, many of the Northern States, as well as Congress, passed laws striking from the rolls of the bar all barristers who did not take a new oath of office, containing an affirmation that they had not contributed "countenance or support to the rebellion." This was an unphilosophical, inquisitorial, and illegal enactment. *Unphilosophical*: because it tended to defeat its own purpose; and in fact some took the oath who had afforded material support to the rebellion, while others, with delicate scruples of conscience, refused to take it, only because they had sent money to their starving relatives at the South. *Inquisitorial*: because it compelled persons, under the pressure of a moral torture, to examine their own consciences, and pass a judicial sentence upon themselves. *Illegal*: because it assumed to create a new punishment for an offence already committed (*ex post facto*), and to compel a citizen to be accuser and judge in his own case. But when the Supreme Court of the United States pronounced these enactments to be void, — and even before that time, — public opinion repudiated them without hesitation. This illustration is not without parallel in the history of other countries. When the British Government issued their so-called Orders in Council declaring a paper blockade of all European ports against France, it violated the law of nations and the rights of neutrals. Napoleon I retaliated by his Berlin and Milan Decrees equally in violation of international law and of neutral rights. France submitted willingly to Napoleon's decrees, and the rest of Europe to both decrees and Orders *per force*. These Orders in Council were sustained in the British Courts of Admiralty by Sir William Scott, Lord Stowell, one of the ablest and purest of judges. His judgments have never been formally repudiated by the British courts, — probably because no occasion has arisen for it, — but they have been repudiated by Public Opinion, and by a whole generation of British statesmen. France has passed the same condemnation upon the Berlin and Milan decrees. Under the influence of the renovated Public Opinion of the world Statecraft has become more simple and yet more difficult. The sovereigns of England

do not receive pensions from France. British generals do not take bribes to suffer a defeat. Prime Ministers do not purchase parliamentary majorities. Jobs are scouted out of legislative bodies. Even acts which are capable of explanation are often condemned as impermissible, merely because they require explanation. Modern diplomacy has conformed its usages to the spirit of the new era. Kings do not send jewelry and enamelled ware to the mistresses of their fellow kings. Plenipotentiaries do not found their success upon the bribery of the favourite courtesan of a monarch. The confidences of a minister of state to a seductive woman no longer determine the destinies of nations. Couriers are safe from waylaying and assassination for the purpose of intercepting their despatches. The French Revolution of 1789 sent into the world a class of diplomatists who were distinguished rather for earnestness and clearness of expression than for polished manners or grace of style. And from this time onward it may be said that Public Opinion, whose judgments receive their promulgation mostly in the public press, has been a governing power in the civilised world, which the most potent rulers have been compelled to conciliate. Even of Russia it can no longer be said, in Talleyrand's incisive phrase, that it is "a despotism limited by assassination," but it may be truly said "a beneficent despotism, limited by public opinion, and the conscience of a benevolent ruler."

PUBLIC OPINION NOT NECESSARILY DEDUCTIVE.

And this Public Opinion is not the result of a purely logical process of thought, but comes from procedures which are, in some sense, but not in a disparaging sense, empirical. Doubtless we get our morals from Judea, our modes of thought from Greece, and the spirit and art of jurisprudence and legislation from Rome. But our morals are purer than those of the disciples of the Apostles; we have attained to truths which Plato and Aristotle never reached; and modern jurisprudence and legislature are far advanced beyond those of Rome.

This is owing in a great measure to the fact that we are more

practical in our modes of thought and action than the Hebrews and Grecians were ; we mingle more of the concrete in our propositions, and are disposed to adhere to formulas which have wrought out good results. All experiments are in one sense empirical, but a successful experiment is worth a thousand merely deductive arguments. A people's own successful administration of its own affairs is the most satisfactory of all demonstrations. To ask any people to discard such a well-tested administration, is to imitate the French savant who proposed to change the existing standard of measurement, because it is said to vary the ten-thousandth part of an inch from an arc at the Equator upon which it was based. The Public Opinion which is here meant is what Cicero calls the *Consensus omnium bonorum*, the assent of all good men. And this Public Opinion, first, the public opinion of the world, and secondly, the public opinion of the British Islands, we regard as omnipotent in the British Parliament, and that its legislation is advancing as rapidly in the direction of liberalism as is desirable. In fact, the British Government has been well defined to be a republic in disguise. We have therefore no prejudice against British Institutions.

WHAT IS A REPUBLIC?

This term is used so frequently that it ought to have a well defined meaning, but it is very doubtful whether there are any ten intelligent men in the world who could, without consulting each other, unite upon a definition of a republic which would exclude such monarchies as the British, Belgian, and that of Holland, or even a democratic empire. I have not been able with all my reading of French writers, and of French newspapers, and from all my conversation with the French people, to form any distinct notion of what they mean by the term Republic. Do they mean the Roman oligarchy, which was called a Republic? The Republic of Venice, with its anonymous accusations cast furtively into the lion's mouth, and its deep, dark dungeons, which never gave up their victims alive? The republic of Robespierre, in which Paris dominated the pro-

vinces, and was in its turn dominated by the Jacobin Club and its mob of Septembrisers? A republic which such statesmen as Ledru-Rollin seem to have thought had come to life again, when, in the session of the Legislative Assembly of June 11th, 1849, under the Constitution of 1848, finding himself in a minority on the Roman question, he, first in the tribune, and afterwards in his seat, threatened to appeal to arms, and his associates of the Mountain applauded? Even M. Thiers, in his celebrated speech in the Legislative Assembly in 1851, speaking of republicanism, uses twice the expression "the American form," which he says some are desirous to introduce into France. Is it true, then, that there are persons, and even parties, in France who wish to introduce there "the American form?" To divide France into a number of Sovereign States, each with its governor, legislature, and judiciary, and then to form out of the states,—*E pluribus unum*,—a Federal national government, with such powers only as are necessary to present a national character of unity to the world? Is this the Republic which people have in their thoughts when they speak of imitating "the American form?" The Girondists once proposed something of the kind, but they were sent to the scaffold in the name of "the French Republic one and indivisible." What, then, is meant by the term Republic? And this doubtful term leads us to a subject which may properly be discussed at this place, and to remark that

PUBLIC OPINION IS OFTEN MISLED BY DECEPTIVE PHRASES.

A terse condensed phrase is often both proposition and argument. "Rescue the Holy Sepulchre from the infidel!" was all the text and sermon which Peter the Hermit needed to rouse all Europe to arms. Mr. Calhoun's announcement of "an irrepressible conflict between freedom and slavery," when taken up by his adversaries, as their war-cry, led a million men to the battle field. But such phrases are often deceptive, and appeal more to sentiment than to reason. "The People's Fight" (*Voelkerschlacht*) was the cry which called all Europe

to arms against Napoleon I., and ended by forcing the Bourbons back upon unwilling France at the point of the bayonet, and leaving Europe chained, mute, and motionless, at the feet of the Holy Alliance. "To preserve the balance of power" and "to protect the liberties of Europe" were the *ignes fatui* which led England, for two hundred years, to pursue a traditional policy which she seems to have renounced when the Schleswig-Holstein imbroglio occurred, and whose most abiding souvenir exists in the form of a national debt.

"Saviour of nations not yet saved ;

"And Europe's liberator-still enslaved."

And that other recent and most sonorous phrase,

UNITY OF NATIONALITY,

may be used in a truthful, most expressive sense, and also in an untruthful and most deceptive sense, which presents a most dangerous snare to Public Opinion. What is unity of nationality? It does not necessarily imply unity of race, or unity of language, or unity of laws, or unity of religion. A people may possess any one of these qualities, or two or more, or even all of them united, and yet have no unity of nationality. It may be destitute of all these qualities, and yet possess a perfect unity of nationality. It may be defined to be that union of qualities which gives to a people homogeneousness of thought, habit, and action. But it is much easier to illustrate it by example than to define it.

NATIONAL UNITY OF FRANCE.

France possesses eminently a unity of nationality. Not of race, for her blood is mixed: Phœnician, Greek, Roman, Saracenic, Celtic, Gothic, Teutonic, Norman, and Basque, and still retaining in her provinces distinct types of all these various nationalities. Not of religion, for she is catholic, protestant, rationalistic, and sceptical. Hardly of language, even, when we

consider the number and diversity of the different patois of French, and how many other languages are in habitual use by large portions of the population. Her unity comes from her military traditions of two hundred years; her centralised government; the uniformity of her laws as embodied in the Code Napoléon; the close commercial connection and dependency of her several parts, which has been greatly promoted by the public works of the present reign; and from a community of thought, the result of the French literature of the last seventy years. If the government were, by gradual processes, decentralised, it would probably not impair its unity: in politics, as in architecture, those constructions are the most secure which are self-sustained.

NATIONAL UNITY OF GREAT BRITAIN.

In the British Empire, Great Britain,—the phrase is used in its strict sense, including only England and Scotland,—presents a striking example of unity of nationality. These two islands, each with populations of diverse origin, the two nations originally hostile, and in a condition of chronic war with each other, their language not even yet the same; Catholic, Episcopal, Presbyterian, and of all forms of dissent in religious faith; with systems of municipal law and administration strongly contrasting with each other; still present a wonderful unity of nationality. This comes not solely, nor indeed in the greatest measure, from unity of commercial interests, however strong that bond may be. It is derived rather from the wise and perfect loyalty with which England, by the Act of Union of 1703, admitted Scotland to an equal participation in political rights. Moreover, there were no old festering wounds to be healed, or skinned over after an empirical fashion. Scotland was not a conquered country. On the contrary, it was her pride that the reigning dynasty represented the male line of her own native kings. Her religious institutions were not only left untouched, but sedulously cherished by the Act of Union, and guarded by the coronation oath. No tithes were levied to support a hated foreign church. No

cancerous question of tenant right lay deep beneath the surface, corrupting the springs of life, and ready to break forth in ulcerous destruction. The union, based upon favourable circumstances, was loyally proposed and loyally accepted, and has resulted in a perfect unity of nationality, a oneness of political spirit, thought, patriotism, habit, and power.

But when we contemplate the kingdom of Great Britain *and Ireland*, all unity of nationality vanishes at once. Ireland has grievances of her own, which are a part of her very consciousness. Hers is a conquered people. She cannot forget to believe that she once had native kings of her own. Cromwell practised "thorough" upon her at Drogheda and Cork, and she was dragooned by William of Orange. The poorest peasant who claims tenant right knows well that the lands which he occupies were the confiscated prize of cruel war, while he conveniently forgets that his own personal ancestors never owned a foot of them. But the future is full of hope for Ireland. When the justice which is now being meted out to her shall have reached its full measure, the land will have peace, and then there will be a unity of nationality of all the British people. Incredible as it may seem to the English reader, there is no people more fully imbued with the sense of law than the Irish. But they must believe that the law is an equal one, and not merely a vindictive or oppressive enactment. In America, the Irish, taken as a body, are law abiding. If the Irish tenant peasant had any secure interest in the soil, or in his lease, he would become intensely conservative. The Irish immigrants who become freeholders in the United States, are very conservative of the rights of property (1).

(1) On stating these facts to a very intelligent English gentleman whom I met in England, he expressed his surprise, and remarked that it was not true in England that the Irish immigrant became better himself morally, or bettered his condition. But he admitted that the condition of this class in England was very precarious, that wages were low and uncertain, and that no one belonging to it had any reasonable hope of emerging from it. I requested him to state to me what, in his opinion, were the first three wishes of the Irish peasants, taken as a body. He answered, first, land; secondly, a free church; thirdly, the education of their children. "I replied: Well, in the United States an Irish immigrant for £100 sterling can purchase in fee simple absolute 160 acres of

NATIONAL UNITY OF THE UNITED STATES.

In the United States, the same causes which led to the late Civil War prevented, for the time, the development of a complete unity of nationality. But now these causes have been removed. Even the Democratic party, which, with all its errors, was the great party of progress up to the breaking out of the Civil War, and which did not fully support President Lincoln's war policy, has accepted the results of the war as the basis of new national development. With the coming unity of political sentiment, which is as certain to come to us as it came to England and Scotland after the disturbances of 1715 and 1745, there is no reason why the United States should not speedily attain to the highest type of national unity, and the most illustrative type as well. Descended from Roundheads and Cavaliers, from Catholics and Huguenots, from anabaptists and quakers, and receiving into their bosom every year hundreds of thousands of immigrants from other countries, the United States still preserve their British institutions, and their political homogeneousness, as certainly as they preserve the English language. And perhaps the English language is the potent instrument which so rapidly affiliates all foreign immigrations with our political

and; build upon it a cottage as good as he ever occupied in Ireland; and support himself and family upon it. All churches are free in the United States, and so are the common schools. The £100 can be laid up out of his wages by the immigrant in five years, on the average."

It is a very painful spectacle to see the peasant cottages in Ireland naked of shrubs or vines; with no fruit-trees: all suggestive of that uncertainty of tenure which deters the tenant from planting a rose-bush or an apple-tree. Still more painful to see farmhouses dismantled, and used as stone-quarries. That system which consists in deporting the inhabitants of a country in order that the small holdings may be thrown into large farms, seems to me to be a most wicked one, notwithstanding the array of statistics to prove that it is a profitable one to the landlord, and that the products of agriculture are increased by it. A country does not consist merely of land and cattle, but of a people also. One of Ireland's own poets, more than a hundred years ago, unconsciously predicted the fate of his own country, when he described

"the land to various ills a prey,

Where wealth accumulates and men decay."

To violate the attachment of a people to their birthplace is only less wicked than to violate the family relation

institutions. An anecdote is related of Bolivar, the South American Liberator, by a young Englishman who attended him in his last days, and who, as the old patriot was wasting out his life in nervously walking up and down his apartment, ventured one day to suggest that there was yet hope for the dissevered and shattered South American republics. "No, my young friend," said Bolivar, "no people can maintain institutions derived from the United States who do not speak the English language." "Do you think, then, that republicanism is a matter of race?" was the rejoinder. "No, not a matter of race; but they must speak the English language, and through the English language rise to the comprehension of the political ideas which it expresses." And the use of the English language is doubtless the secret of the rapid political affiliation of foreigners who become American citizens. Neither they, nor especially their children, who come to use the language of Shakespeare, Bacon, and Milton, could ever confound the "liberty" of the British American with the "libertad" of the Spanish American, any more than they would confound his "casa,"—his thatched open shed,—with the English "home."

FREEDOM OF THE PRESS.

The Press is free in the British dominions and in the United States. And the people of all those countries have a very definite and practical notion of what that freedom is. Benjamin Franklin was known widely as a journalist, long before he became famous as a philosopher or statesman. Indeed, he was the first journalist who emerged into statesmanship. At the end of a very long life, he derived great consolation from the fact that he had never knowingly published a wilful falsehood or a scandalous attack upon any person. His definition of freedom of the press was: "Perfect liberty, controlled by a cudgel." Franklin was fond of this kind of expression. But it conveys the essential truth. Liberty implies responsibility, and responsibility implies restraint. The British or American journalist is responsible, first, to himself: to his own sense of justice and pro-

priety, to the ethics of the gentleman. Next, to public opinion, without whose material and moral support he cannot exist. And lastly to the law, which can punish him both pecuniarily and criminally. The press is free : every one may print and publish what he pleases, but under the condition of responsibility for the act⁽¹⁾. This is Franklin's cudgel. This is so well understood in Great Britain and the United States that the limit is rarely exceeded. And when it is exceeded, the remedy afforded by the courts is generally an ample one. For an injury inflicted without malicious intent, such compensation is awarded as meets the injury. If the injurious act was accompanied by a malicious intent, vindictive damages are awarded. Every one there knows, also, that a scandalous *truth* may not always be published with impunity. That if a person is a candidate for a public office, for example, a journalist has the right to publish the fact that he has formerly been convicted of crime ; for this is an important fact which the people have a right to know before they entrust him with a public office. But if he is living a quiet, decorous life, asking nothing of the public, and not obtruding himself upon their notice, a journalist has no right to make a gratuitous and malicious publication of his shame. A journalist has no right by *malicious* words, signs, or pictures, to hold any one up to public ridicule and contempt, even by publishing the truth. Here the municipal law and the code of private morals coincide.

FREEDOM OF THE PRESS IN FRANCE.

Here, by anticipation, is the place to ask : are these the rules which govern and restrain journalism in France ? We answer : Yes and No. Yes : for since all restrictions upon the absolute freedom of the press were removed some months ago, many, and, I am willing to believe, most of the journals have

(1) I have not thought it necessary to state in the text that in England and America the publication of a scandalous libel may be prevented on application to the courts, if the intention to make it is clearly manifested ; for, generally, the intention is only disclosed by the publication itself as an accomplished fact.

been conducted on these principles by editors and writers who, while they have entered into great discussions with earnestness and warmth, have never forgotten that they were responsible ;— responsible to themselves and to public opinion, if not to the law. No: for there are others who have neither appreciated nor accepted any such responsibility. With more ability than M. Rochefort, with better information and more vivacity, and therefore better “supplied with witticisms by their memory and with facts by their imagination,” they immediately so far surpassed him in his scandalous chronicle that his occupation was entirely gone. Why should people send to Brussels, for stale and expensive scandals, served cold in a rustic manner *au naturel*, when they could have them at home fresh every morning, hot with malice, and seasoned with the most piquant wit? Scandals which spared neither position nor sex; invading the privacy of the family and of the sick-room; gross in subject and indelicate in treatment. Such scandals as no English or American gentleman would foster by even buying a copy of the paper, or by suffering it to come into his house or place of business: nor would he even read them, except for some comparative purpose such as prompts a surgeon to dissect a cancer. We cannot imagine a British newspaper, pretending to any decency, uttering such scandals, we will not say of the Queen, but of any person whatsoever. But in vain do we look in these journals for the announcement of any definite line of policy, or the discussion of the situation. One may read these journals for months without being able to form any distinct conception of what these people desire, except what may be summed up in one phrase: Revolution and Republic. The world knows what Revolution means. That word needs no definition. But what kind of Republic is meant, the world does not know (*).

(*) While these sheets are going to press several journalists of Paris have been convicted and sentenced to punishment for libel. These prosecutions are, properly speaking, for the offence of *violating the liberty of the press*. The English journals of the same dates publish the account of several convictions for libel in the courts at London, punished with fine and imprisonment, and the British press approves these convictions.

THE PUBLIC MEN OF THE UNITED STATES.

It is said and published in many European journals that our public men are corrupt, our judges venal, and that mobs everywhere are permitted to commit acts of violence which are left unpunished. A stranger travelling in the United States bribes an officer of the custom-house, and then reports that all our officials are dishonest.

We know in America no higher character than that of the gentleman : that noble character in which are commingled the elements of integrity, truthfulness, justice, good-nature, forbearance, self-control, self-consciousness, modest self-assertion, culture, and politeness. These have been the characteristics of our Presidents, as a class : not one of them has been a person of questionable antecedents ; and he who was most wanting in polish and grace will probably stand highest on the roll in the judgment of mankind. We need not confine ourselves to these illustrations. We may take the candidates whom the Democratic party has presented for election to the Presidency during the last twelve years, and none of whom were elected : Messrs. Breckenridge, McClellan, and Seymour ; and as gentlemen of the highest type, we are not ashamed to place them in comparison with any gentlemen who ever sat in any Legislative body, or entered into any cabinet, or ruled any country.

OUR JUDGES.

Our judges, too, will bear a comparison with those of any country. In some of the States of the Union the judges are elective by the popular vote. The system is not, I think, a popular one among the people themselves. But it has not as yet borne such fruits as to make it worthy of condemnation. An exceptional case does not present any just ground for condemning a system. All the bad judges England ever had were appointed by the executive power. The judges of the Supreme Court of the United States are appointed by the President : those of the

highest Courts of the States of New York, Ohio, and California, for example, are elected by the direct vote of the people. There is not among them all a single judge of bad antecedents, doubtful morals, or questionable integrity. It is easy, and perhaps natural, for a suitor who is himself dishonest, and has lost his case in court, to charge a judge with corruption. It is natural for a large gambler in stocks who has conceived the idea of accomplishing a great operation by means of an injunction, to cry out corruption when he is met with a counter-injunction in return. But lawyers can see at once that the very issuing of an injunction by one party may create a counter equity in favour of the other party, or even of a third party. There is an unfortunate squabble going on now in some of the Courts of New York between some of the judges; but on close examination it seems to resolve itself into a collision of jurisdiction, in which what is called the "comity of jurisdiction" has been disregarded, and into which personal feeling has been permitted to enter: a squabble, however, not more acrimonious or disgraceful than that once enacted in the English Courts on the subject of Admiralty jurisdiction. If our newspapers knew that their partisan comments upon judicial decisions were studiously published in some European journals as the record of established facts, they would certainly be more careful as to what they print. The other day an English journal published a letter from a New York correspondent, stating that such an operator in the stock board had such a judge who belonged to him, and another great operator owned another judge. This is only a repetition of the defamatory slang of the lobby of the Exchange.

MOB LAW.

It will often happen in the remote confines of civilisation, where the police force is small and sparse, that men taken red-handed in the execution of crime, become victims to popular violence. This is inevitable. It will happen everywhere, under all forms of government. But a few such incidents do not cha-

racterise the civilisation of any people. Moreover, most of these instances, which are studiously paraded to the discredit of the people of the United States, have not in any respect the character attributed to them. If a party of emigrants are crossing the plains, with their caravan of waggons and cattle, a thousand miles from officers and courts, and one of them murders another in cold blood, it is not an instance of "lynch law," if the caravan is arrested, a judge appointed, a jury empaneled, the criminal tried, condemned, and put to death. A party of Frenchmen crossing the desert of Sahara, a colony of Germans in Siberia, or of Englishmen in Australia, would do the same. The "Vigilance Committee" of San Francisco, in 1851, had no characteristics of a mob. We had imported into that remote state the mild laws of New York, Massachusetts, and Pennsylvania, which were suited only to old and thickly-settled countries. But we found in our midst the thieves, burglars, and murderers of London, Paris, New York, and Philadelphia, and the escaped convicts of Australia, often organised in large and formidable bands. The police force was small, and in part corrupt. The laws themselves were insufficient—not sufficiently repressive. It was not an exercise of mob law when the citizens rose *en masse*, and seized a criminal who had not only committed murder himself, but was standing quiet while an innocent man, who, from his resemblance to him, had been convicted of that same murder, was about to be hanged for it. They acted slowly and dispassionately, and after trying the criminal, and keeping him in confinement for several days, deliberately hanged him at noon in the public streets. This was not the act of a mob like that which hanged Captain Porteous at Edinburgh, or the other mob which ravaged London some years later. It was the deliberate, as well as instinctive act of a people of British origin, rising to vindicate, and not overturn, the law; to cause terror to the brigands, and put them to flight.

THE RIGHTS OF LABOUR.

Capital is one of the great promoters of industry, for it furnishes the raw material and the wages for industrial enterprises. It constructs great public works which without its aid could never succeed. Private capital, unaided by government, is sometimes incapable of such immense enterprises as the Suez Canal, the Mont Cenis Subterranean Railway, and the Inter-oceanic Pacific Railway; yet, in and of itself, it is a great and beneficial power in the world. But, like all other powers, if unchecked, capital becomes a tyranny. The proposition that competition will regulate the relations of labour and capital, was long accepted in theory, but in practice has proved to be wholly deceptive. It therefore requires other checks from public opinion and from legislation, as a protection of the productive classes.

In the United States we have first followed, and then outstripped the British Parliament on the subject of the rights of labour. More than fifty years ago, the English cotton manufacturers found that the demand for labour was so great, that children were employed in the cotton factories at so early an age, and for so many hours in each day, that they had no childhood or youth, and were, moreover, subjected to the most demoralising influences. These capitalists demanded, to their own imperishable honour, laws to protect these poor children; but demanded them for a long time in vain, until they finally rallied Public Opinion to their support, when they succeeded in their benevolent purpose. Many years later, the operatives of Great Britain felt themselves aggrieved by what they considered the oppressive demands of capital, and attempted to form organised associations for self-protection. But the laws declared such associations illegal. The British Parliament enacted a law which removed this disability. This law was not enacted because the operatives had a party in Parliament to enforce their claims, for no such party existed. It was only because they appealed to Public Opinion, to the moral sense of the British public, that

they obtained the rights which they demanded. Even then it was said, that this conceded right of voluntary association would be fruitless, because if labour organised itself for self-protection against capital, then capital would organise itself for self-protection against the exorbitant demands of labour. But this result is precisely what is desirable. When these two forces, both organised, meet face to face, they are then in a position to act as contracting parties, and to make treaties which shall protect the rights of each, instead of wasting their forces in a guerilla warfare upon each other.

In the United States we have gone even further. Public Opinion has there recognised it as a truth, that men were not sent into the world merely to work, eat, sleep, and die, as the brutes do, but to enjoy life measurably; that any operative or handicraftsman who labours industriously eight hours a day, is entitled to the other sixteen for the purpose of refreshment, recreation, social enjoyment, and self-culture. This Public Opinion has culminated in enactments of Congress and of many of the States, providing that, in the absence of a written agreement to the contrary, eight hours' daily labour shall be considered a day's work. It is true that the contracting parties may still make a different agreement, but they are not likely to do so in the presence of a public opinion which has received such an emphatic expression. Under the influence of these movements, the wages of labour have gradually risen in those portions of the world where capital is the most active, subject to some disturbances from the competition of nations with each other, which must in time regulate themselves. This recognition of the rights of labour must prevail in all civilised countries, for it ought to prevail. It is not the preaching of a new gospel. It is as old as the text: "The poor you have with you alway." The Moravian peasant, who starves with his wife and children in his hovel of a single room, upon wages of ten cents (five pence, or eleven sous) a day, is one of Christ's poor. And between his degradation, and that point of elevation where life becomes a means of enjoyment to intelligent and cultivated social beings, there is no resting-place. The recognition of the rights of labour is the fundamental principle of the movement now in pro-

gress for the relief of Ireland. And the same principle, it would seem, demands that Chinese and other barbarian operatives should be excluded from civilised countries. For when such transient immigrants come into a country, letting themselves out to service for wages which are graduated by a scale of their own country, where capital and a redundant population have reduced the operative to the condition of a serf, then the civilised operative is subjected to a new contest with capital, in which he is wholly unprotected, and which must end in degrading him to the level of his barbarian competitor. Much sentimentalism has been wasted upon this subject, but the measure and effect of this kind of competition can be easily demonstrated by a comparison of the wages demanded by the two classes of operatives, the civilised and the barbarian⁽¹⁾.

(1) As a part of this sentimentalism, may be classed a hope often expressed that the contact of the Chinese with Christian nations might be the means of christianizing them. But those who have not come into actual contact with them cannot conceive the ineffable disdain with which even the lowest Chinaman looks down upon all outside barbarians. Without mathematical science sufficient to construct an almanack (*see* M. Huc), or engineering skill competent to work a steam-engine with safety, the Chinese look upon European science and skill as we do upon the jugglery of an Indian Fakir. Besides, these transient immigrants are of the very lowest order in their own country, the veriest Pariahs of the population, and if they were all converted to Christianity could make no appreciable impression upon their countrymen.

PART II.

THE "ALABAMA" TREATY.

COMMENCEMENT OF THE CIVIL WAR.

On April 12th, 1861, the civil war commenced in America, by the firing upon Fort Sumter. On April 19th, 1861, President Lincoln issued a proclamation declaring the ports of the seven states in which the insurrection had broken out to be in a state of blockade. On May 14th, 1861, the British Government issued a proclamation recognising the Confederate States as belligerents, and requiring its subjects to observe neutrality between the parties at war.

THE "ALABAMA."

On June 23rd, 1862, Mr. Adams, Minister of the United States at the Court of Great Britain, writes to Earl Russell that a war steamer had been launched in the Mersey, and was fitting out for the Confederate service. Earl Russell replies, June 25th and July 4th, that the matter has been referred to the proper department of the Government, and suggests to Mr. Adams that all the evidence he has respecting the destination of the vessel be submitted to the collector of customs at Liverpool. The

Lords Commissioners of the Treasury, on July 1st, had meanwhile reported that the ship was evidently designed for a ship of war; that the builders, the Lairds, did not deny this, nor that she was built for a foreign Government, but refused to tell what her destination was; that the opinion of their solicitor, and their own, was, that there was no sufficient ground to warrant the Treasury Department in detaining the vessel. Following Earl Russell's suggestion of July 4th, all the evidence in possession of the American Minister and consul was then submitted to the collector of Customs at Liverpool, and also to Mr. Collier, one of the Queen's counsel. On July 16th Mr. Collier gave his opinion to the effect that the evidence was almost conclusive as to the fact that the vessel was fitting out as a Confederate privateer; that such an act was contrary to the provisions of the British Foreign Enlistment Act, and declared the vessel liable to seizure by the officer of the Customs; and recommended that the Customs' officer be requested so to seize her, being indemnified, if he required it; and that the British State Department be advised of the fact, and requested to authorize the seizure. On July 24th, Mr. Adams furnished Earl Russell still more evidence, and also a further opinion given by Mr. Collier, to the effect that the collector of Customs would be fully authorised in detaining the vessel *under the Foreign Enlistment Act*. The same evidence, and the same opinion, were, at the same time, presented to the Board of Customs, with the further information that the vessel was then lying in the docks, with a crew of fifty men on board, and ready for sea. This letter the Board of Customs referred to the law officers of the Crown, promising to follow their opinion in the matter. The law officer to whom the matter was referred was meanwhile taken suddenly and alarmingly ill, so that other counsel had to be called in, who finally advised the detention of the vessel. The order was given on July 29th, but before it reached Liverpool the vessel had sailed, without clearance or register from the Custom-house, with the Lairds the builders, their families, and other guests on board. No swift vessel, or any other vessel, was sent out to overtake her and bring her back. She then went outside of British waters, where she received her equipment of guns and ammunition sent to her from

England; was christened the "Alabama," and commenced her career of the destruction of American shipping, under a commission from the Confederate Government. She was repeatedly in British ports, where she refitted and received supplies, as well as moral and social support; but the British Government did not attempt to seize her at any of these ports, being advised, that by analogy to the principles applicable to the revenue laws, when she had once completed her voyage of escape from the port of Liverpool, by arriving at her port of destination, she was purged of her original sin, and no longer liable to seizure. The history of the depredations of this vessel are sufficiently well known. She ravaged the ocean, burnt the merchant vessels of the United States; and almost completely extinguished their shipping. Finally, the first time she encountered a war vessel of the United States, she was attacked and sunk.

CLAIMS FOR DAMAGES.

The United States have made repeated claims upon the British Government for national reparation as well as for the damages suffered by their citizens in consequence of these depredations; but these claims have always been rejected. Finally, just as the term of President Johnson was drawing to its close, when Mr. Seward was Secretary of State, the plan or convention for a treaty was agreed to by the President and Secretary, through Mr. Reverdy Johnson, the Minister of the United States at London, and the British Government, and recommended by the President to the Senate of the United States for approval, such approval being necessary by the Constitution of the United States to make the treaty valid. This will be called, from the names of its authors, the Secretary and the Minister,

THE SEWARD-JOHNSON TREATY.

It is printed by itself as an Appendix at the end of this Essay, some portions having been italicised for facility of reference.

MR. SUMNER'S ARGUMENT.

When this treaty came to be acted upon by the Senate of the United States, in secret session, where such matters are always acted upon, Mr. Charles Sumner, a Senator from the State of Massachusetts, delivered a speech against the ratification of the treaty. Mr. Sumner's argument was briefly this:—

The real object of making a treaty should be the settlement of national claims upon the British Government for its conduct during our civil war. This is a *national* claim, involving great questions of international law. The treaty recognises no such claim or question; no liability on the part of the British Government; no principle of settlement. It provides only for the settlement of private claims, on each side. Under its provisions those whose property was destroyed by the *Alabama* could claim compensation from the British government; so also could British blockade runners, and holders of bonds issued by the Confederate Government, claim compensation from the government of the United States. Our claims against the British Government commence with its acknowledgment of the Confederates as belligerents, particularly as ocean-belligerents. When thus acknowledged they had neither ships nor prize-courts; by that acknowledgment their ocean-belligerency was in fact created, for theretofore it did not exist; that acknowledgment relieved British privateers who entered the Confederate service from the penalties of piracy. The proclamation of blockade by President Lincoln did not recognise the existence of a war, for history is full of instances of "pacific blockade." The British Government, in allowing the *Alabama* to escape, were guilty not only of negligence, but even of extreme negligence. After her escape:—

"Constantly the pirate ship was within reach of British cruisers, and from time to time within the shelter of British ports. For six days unmolested she enjoyed the pleasant hospitality of Kingston, in Jamaica, obtaining freely the coal and other supplies so necessary to her vocation. But no British cruiser, no British magistrate ever arrested the offending ship, whose voyage was a con-

tinuing 'scandal and reproach' to the British Government. The excuse for this strange license is a curious technicality, as if a technicality could avail in this case at any stage. Borrowing a phrase from that master of Admiralty jurisprudence, Sir William Scott, it is said that the ship 'deposited' her original sin at the conclusion of her voyage, so that afterward she was blameless. But the *Alabama* never concluded her voyage until she sank under the guns of the *Kearsarge*, because she never had a port of her own. She was no better than the *Flying Dutchman*, and so long as she sailed was liable for that original sin which had impregnated every plank with an indelible dye. No British cruiser could allow her to proceed, no British port could give her shelter without renewing the complicity of England.

"I take the case of the *Alabama*, because it is the best known, and because the building, equipment, and escape of this ship were under circumstances most obnoxious to judgment; but it will not be forgotten, that there were consort ships built under the shelter of that fatal proclamation, issued in such an eclipse of just principles, and, like the ships it unloosed, 'rigged with curses dark.' One after the other, ships were built; one after the other, they escaped on their errand; and, one after the other, they enjoyed the immunities of British ports.

"It is plain that the ships which were built under the safeguard of this ill-omened proclamation, which stole forth from the British shores and afterwards enjoyed the immunities of British ports, were not only British in origin, but British in equipment, British in armament, and British in crews. They were British in every respect, except in their commanders, who were rebel, and one of these, as his ship was sinking, owed his safety to a British yacht, symbolising the omnipresent support of England. British sympathies were active in their behalf. The cheers of a British passenger ship crossing the path of the *Alabama* encouraged the work of piracy, and the cheers of the House of Commons encouraged the builder of the *Alabama*, while he defended what he had done, and exclaimed, in taunt to him who is now an illustrious member of the British Cabinet, John Bright, that he 'would rather be handed down to posterity as the builder of a dozen *Alabamas*' than be the author of the speeches of that gentleman 'crying up' the institutions of the United States, which the builder of the *Alabama*, rising with his theme, denounced 'as of no value whatever, and as reducing the very name of liberty to an utter absurdity,' while the cheers of the House of Commons echoed back his words. Thus, from beginning to end, from the fatal proclamation to the rejoicing of the accidental ship and the rejoicing of the House of Commons, was this hostile expedition protected and encouraged by England. The same spirit which dictated the swift concession of belligerency, with all its deadly incidents, ruled the hour, entering into and possessing every pirate ship.

"The other aggravation is found in its flagrant, unnatural departure from that Anti-Slavery rule, which, by manifold declara-

tions, legislative, political, and diplomatic, was the avowed creed of England. Often was this rule proclaimed, but, if we except the great act of Emancipation, never more pointedly than in the famous circular of Lord Palmerston, while Minister of Foreign Affairs, announcing to all nations that England was pledged to the universal abolition of slavery. And now, when slaveholders, in the very madness of barbarism, broke away from the National Government, and attempted to found a new empire with Slavery as its declared corner-stone, Anti-Slavery England, without a day's delay, without even waiting the arrival of our Minister, who was known to be on his way, made haste to decree that this shameful and impossible pretension should enjoy equal rights with the National Government in her ship-yards, foundries, and manufactories, and equal rights on the ocean. Such was the decree. Rebel slaveholders, occupied in a hideous attempt, were taken by the hand, and thus with the official protection, and the God-speed of Anti-Slavery England, commenced their accursed work.

"I close this part of the argument by the testimony of Mr. Bright, who, in a speech at Rochdale, among his neighbours, February 3, 1863, thus exhibits the criminal complicity of England :
 " ' I regret more than I have words to express this painful fact, that of all the countries in Europe this country is the only one which has men in it who are willing to take steps in favour of this intended slave government. We supply the ships; we supply the arms, the munitions of war; *we give aid and comfort to the foulest of crimes. Englishmen only do it.*'—*Bright's Speeches*, vol. I., p. 239.

"In further illustration, and in support of Mr. Bright's allegation, I refer again to the multitudinous blockade-runners from England. Without the manifesto of belligerency, they could not have sailed. All this stealthy fleet, charged with hostility to the United States, was a part of the great offence. The blockade-runners were kindred to the pirate ships. They were of the same bad family, having their origin and home in England. From the beginning they went forth with their cargoes of death; for the supplies which they furnished contributed to the work of death. When, after a long and painful siege, our conquering troops entered Vicksburg, they found Armstrong guns from England in position; and so, on every field where our patriot fellow-citizens breathed a last breath, were English arms and munitions of war, all testifying against England. The dead spoke also, and the wounded still speak."

THE EXTENT OF OUR LOSSES.

"*Individual losses* may be estimated with reasonable accuracy. Ships burned or sunk with their cargoes may be counted and their value determined; but this leaves without recognition the

vaster damage to commerce driven from the ocean, and that other damage, immense and infinite, caused by the prolongation of the war, all of which may be called *national* in contradistinction to *individual*.

"Our *national losses* have been frankly conceded by eminent Englishmen. I have already quoted Mr. Cobden, who did not hesitate to call them 'cruel losses.' During the same debate in which he let drop this testimony, he used other words, which show how justly he comprehended the case. '*You have been,*' said he, '*carrying on war from these shores with the United States,* and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about \$15,000,000, or nearly £3,000,000 sterling. *But this is a small part of the injury which has been inflicted on the American marine.* We have rendered the rest of her vast mercantile property useless.' Thus, by the testimony of Mr. Cobden, were those individual losses, which are alone recognized by the pending treaty, only 'a small part of the injury inflicted.' After confessing his fears with regard to 'the heaping up of a *gigantic material grievance* such as was then rearing,' he adds, in memorable words :—

"'You have already done your worst toward the American mercantile marine. What with the high rate of insurance, what with these captures, and what with the amount of damage you have done to that which is left, you have virtually made valueless that vast property. Why, if you had gone and helped the Confederates by bombarding all the accessible seaport towns of America a few lives might have been lost which, as it is, have not been sacrificed, but you could hardly have done more injury in the way of destroying property than you have done by these few cruisers.' (Hear, hear.)

"With that clearness of vision which he possessed in such rare degree, this Statesman saw that England had 'virtually made valueless a vast property,' as much as if this Power had bombarded 'all the accessible seaport towns of America.'

FURTHER BRITISH TESTIMONY.

"So strong and complete is this statement, that any further citation seems superfluous; but I cannot forbear adducing a pointed remark in the same debate, by that able gentleman, Mr. William E. Forster: 'There could not,' said he, 'be a stronger illustration of the damage which had been done to the American trade by these cruisers, than the fact that so completely was the American flag driven from the ocean, that the *Georgia*, on her second cruise, did not meet a single American vessel in six weeks, though she saw no less than seventy vessels in a very few days.'

This is most suggestive. So entirely was our commerce driven from the ocean, that for six weeks not an American vessel was seen!

"Another Englishman, in an elaborate pamphlet, bears similar testimony. I refer to the pamphlet of Mr. Edge, published in London by Ridgway, in 1864, and entitled *The Destruction of the American Carrying Trade*. After setting forth at length the destruction of our commerce by British pirates, this writer thus foreshadows the damages: 'Were we' says he, 'the sufferers, we should certainly demand compensation for the loss of the property captured or destroyed—for the interest of the capital invested in the vessels and their cargoes, and, may be, a fair compensation in addition for all and any injury accruing to our business interests from the depredations upon our shipping. *The remuneration may reach a high figure in the present case; but it would be a simple act of justice*, and might prevent an incomparably greater loss in the future.' Here we have the damages as assessed by an Englishman, who, while contemplating remuneration at a high figure, recognizes it as a simple act of justice.

"Such is the candid and explicit testimony of Englishmen, pointing the way to the proper rule of damages. How to authenticate the extent of national loss with reasonable certainty is not without difficulty; but it cannot be doubted that such a loss occurred. It is folly to question it. The loss may be seen in various circumstances, as in the rise of insurance on all American vessels; the fate of the carrying trade, which was one of the great resources of our country; the diminution of our tonnage with the corresponding increase of British tonnage; the falling off in our exports and imports, with due allowance for our abnormal currency and the diversion of war. These are some of the elements; and here, again, we have British testimony. Mr. W. E. Forster, in the speech already quoted, announces that 'the carrying trade of the United States was transferred to British merchants;' and Mr. Cobden, with his characteristic mastery of details, shows that, according to an official document laid on the table of Parliament, American shipping had been transferred to English capitalists as follows: in 1858, 33 vessels, 13,638 tons; 1859, 49 vessels, 21,673 tons; 1860, 41 vessels, 13,638 tons; 1861, 126 vessels, 71,673 tons; 1862, 135 vessels, 64,573 tons; and 1863, 348 vessels, 252,579 tons; and he adds, 'I am told that this operation is now going on as fast as ever;' and this circumstance he declares to be 'the *gravest part* of the question of our relations with America.' But this '*gravest part*' is left untouched by the pending treaty.

AMERICAN STATISTICS ON THE SUBJECT.

"Our own official documents are in harmony with these English authorities. For instance, I have before me now the report of the Secretary of the Treasury for 1868, with an appendix by

Mr. Nimmo, on shipbuilding in our country. From this report, it appears that in the New England States, during the year 1855, the most prosperous year of American shipbuilding, 305 ships and barks and 173 schooners were built, with an aggregate tonnage of 326,429 tons, while during the last year only 58 ships and barks and 213 schooners were built, with an aggregate tonnage of 98,697 tons. I add a further statement from the same report:—

“During the ten years from 1852 to 1862 the aggregate tonnage of American vessels entered at seaports of the United States from foreign countries was 30,225,475 tons, and the aggregate tonnage of foreign vessels entered was 14,699,192 tons, while during the five years, from 1863 to 1868, the aggregate tonnage of American vessels entered was 9,299,877 tons, and the aggregate tonnage of foreign vessels entered was 14,116,427 tons—showing that American tonnage in our foreign trade had fallen from two hundred and six to sixty-six per cent. of foreign tonnage in the same trade. Stated in other terms, during the decade from 1852 to 1862, sixty-seven per cent. of the total tonnage entered from foreign countries was in American vessels, and during the five years from 1863 to 1868, only thirty-nine per cent. of the aggregate tonnage entered from foreign countries was in American vessels, a relative falling off of nearly one half.’ — *Finance Report for 1868*, page 496.

ESTIMATES OF FURTHER LOSSES.

“Beyond the actual loss in the national tonnage, there was a further loss in the arrest of our natural increase in this branch of industry, which an intelligent statistician puts at five per cent. annually, making, in 1866, a total loss on this account of 1,384,958 tons, which must be added to 1,229,035 tons actually lost. The same statistician, after estimating the value of a ton at forty dollars gold, and making allowance for old and new ships, puts the sum total of national loss on this account at \$110,000,000. Of course this is only an item in our bill.

“To these authorities I add that of the National Board of Trade, which, in a recent report on American Shipping, after setting forth the diminution of our sailing tonnage, says that it is all to be traced to the war on the ocean, and the result is summed up in the words, that ‘while the tonnage of the nation was rapidly disappearing by the ravages of the rebel cruisers and by sales abroad, there was no construction of new vessels going forward to counteract the decline even in part.’ Such is the various testimony, all tending to one conclusion.

“This is what I have to say for the present on *national losses* through the destruction of commerce. These are large enough; but there is another chapter, where they are larger far. I refer, of course, to the national losses caused by the prolongation of the war, and traceable directly to England. Pardon me if I confess

the regret with which I touch this prodigious item; for I know well the depth of feeling which it is calculated to stir. But I cannot hesitate. It belongs to the case. No candid person, who studies this eventual period, can doubt that the rebellion was originally encouraged by hope of support from England; that it was strengthened at once by the concession of belligerent rights on the ocean; that it was fed to the end by British supplies; that it was encouraged by every well-stored British ship that was able to defy our blockade; that it was quickened into frantic life with every report from the British pirates, flaming anew with every burning ship; nor can it be doubted that without British intervention the rebellion would have soon succumbed under the well-directed efforts of the National Government. Not weeks or months, but years were added in this way to our war, so full of the most costly sacrifice. The subsidies which in other times England contributed to continental wars were less effective than the aid and comfort which she contributed to the rebellion. It cannot be said too often that the *naval base* of the rebellion was not in America, but in England. The blockade-runners and the pirate ships were all English. England was the fruitful parent, and these were the 'hell-hounds,' pictured by Milton in his description of Sin, which 'when they list, would creep into her womb and kennel there.' Mr. Cobden boldly said in the House of Commons that England made war from her shores on the United States 'with an amount of damage to that country greater than in many ordinary wars.' According to this testimony, the conduct of England was war; but it must not be forgotten that this war was carried on at our sole cost. The United States paid for a war waged by England upon the National Unity.

"There is one form that this war assumed which was incessant, most vexatious and costly, besides being in itself a positive alliance with the rebellion. It was that of blockade-runners, openly equipped and supplied by England under the shelter of that baleful proclamation. Constantly leaving English ports, they stole across the ocean, and then broke the blockade. These active agents of the rebellion could be counteracted only by a network of vessels, stretching along the coast, at great cost to the country. Here is another distinct item, the amount of which may be determined at the Navy Department.

"The sacrifice of precious life is beyond human compensation; but there may be an approximate estimate of the national loss in treasure. Everybody can make the calculation. I content myself with calling attention to the elements which enter into it. Besides the blockade, there was the prolongation of the war. The Rebellion was suppressed at a cost of more than four thousand million dollars, a considerable portion of which has been already paid, leaving twenty-five hundred millions as a national debt to burden the people. If, through British intervention, the war was doubled in duration, or in any way extended, as cannot be doubted, then is England justly responsible for the additional ex-

pend'ture to which our country was doomed; and, whatever may be the final settlement of these great accounts such must be the judgment in any chancery which consults the simple equity of the case.

'This plain statement, without one word of exaggeration or aggravation, is enough to exhibit the magnitude of the national losses, whether from the destruction of our commerce, the prolongation of the war, or the expense of the blockade. They stand before us mountain high, with a base broad as the nation, and a mass stupendous as the rebellion itself. It will be for a wise statesmanship to determine how this fearful accumulation, like Pelion upon Ossa, shall be removed out of sight, so that it shall no longer overshadow the two countries.'

Mr. Sumner's argument tended in its logical result to establish these propositions, namely:—

That the British Government, by its premature acknowledgment of the Confederates as belligerents, were responsible, not only for the direct, but also for the indirect injury resulting from that act: for all the injury inflicted by blockade-runners; and for all the expenses incurred by the prolongation of the civil war;

That by suffering the *Alabama* and her kindred ships to escape, the British Government was liable for all the depredations committed by them, and for all the resulting damage to the mercantile marine of the United States;

That the damages were not to be estimated by any technical mode, but by the largest methods, and that their large amount was to have no influence whatsoever on the principle which demanded compensation.

REJECTION OF THE PROPOSED TREATY.

The treaty was rejected by the Senate by a vote of 58 to 1. After this final action of the Senate the injunction of secrecy was removed, and Mr. Sumner's speech permitted to be published; a courtesy which, under such circumstances, is generally extended to a speaker⁽¹⁾. But neither by rejecting the treaty, nor by allow-

(1) Mr. Thornton, in his note to the Earl of Clarendon of April 19, 1869, says that, "contrary to custom, the Senate authorised the publication of Mr. Sum-

ing the speech to be published, did the Senate commit itself to all the doctrines of the speech : all that the Senate decided was that the treaty was not to be approved. Lawyers are familiar with the fact that after the presiding judge of a court has pronounced the decision of the court, giving *his* reasons for it, the other judges often content themselves with saying : “ We concur in the judgment ” : that is to say, “ We do not commit ourselves to the principles or arguments announced by the presiding judge, although we are satisfied that the case must be decided in favour of the party indicated by the decision.”

THE FIRST EFFECT OF THE REJECTION OF THE TREATY.

Before discussing the effect produced by the publication of the proposed treaty at the same time with that of the fact of its having been rejected, and of Senator Sumner's speech, it is necessary to notice a condition which, in many respects, is peculiar to the people of the United States. It is remarkable that the great speeches of Demosthenes have a twofold aspect ; first, they are addressed in their peculiar rhetorical character to the passions of the democratic *demos* of Athens, but also, in their closely interwoven logic, to the greater and more reflective audience of “ all time.” And so the great speeches in the American, as well as in the British Parliament, on close analysis present a threefold character ; first, of an appeal to the deliberative body to which they are first addressed ; secondly, of a speech to the nation at large ; and thirdly, of a statement of facts and logical discussion intended for foreign nations and future generations. Senator Sumner's speech partakes of all these characteristics. It was

ner's speech, made in Executive Session.” I apprehend that Mr. Thornton has been misled by a form of expression. It is not the *general* custom to publish speeches made in Executive Session, because permission to do so is not generally asked. But it is equally the general custom, I apprehend, to grant permission when it is desired, *after the final action of the Senate* ; the purpose of secrecy having then ceased to exist. Many such speeches enter into our political literature. Those made on the occasion of the rejection of Mr. Van Buren's nomination as Minister to the Court of St. James, will readily occur as a case in point,

published in many of the leading daily and weekly newspapers in the United States, and the subject of the treaty became at once a matter of general discussion by the press and people of the United States. The public press of the United States is a very able one. Not yet, as a whole, as able as the British press ; and chiefly, as I think, for two reasons. First, because the editorial body, as a whole, is not as well educated. We have among our editors many men as thoroughly educated and as many-sided as any in Great Britain ; but when it is remembered that our newspapers are five times as many in number, and their readers five times as numerous as those of Great Britain, it will not be thought surprising that many self-educated men should be found among our ablest editors. An imperfectly educated man rarely becomes a many-sided man, and a one-sided man is apt to be bigoted, and so far unfitted for the position of a leading editor.

Another reason why our press is not on the whole as able as the British, is that it does not yet command such assistance from writers of ability outside of the editorial corps. There is a large class of educated young men in England who are studying for the learned professions, or perhaps already commencing their professional life, who have the leisure and more than an inclination to write special articles for the public press. This forms an important aid to the British press, and must do so eventually, in a greater degree than at present, to that of the United States. But in both countries, the standard sought to be attained is very high, and in each articles occasionally appear in the daily papers which are equal to anything in the English language. In each, the daily literature of the press is beyond any comparison with the essayists of the last century, beginning with Addison and ending with Johnson.

In the United States the newspaper goes everywhere. Every man who can read takes a newspaper into his family, often two or three, besides a monthly magazine. But our people do not allow the newspapers to do their thinking for them. They are as fond of thought and open discussion as the Scotch, and perhaps as combative. Their newspapers furnish them with facts, with arguments on each side of all contested questions, and

they think, discuss and decide for themselves in all their social meetings, in the trades, and artisans' shops, the village Lyceums, the reading-rooms, the railway cars, at the roadside, and beside their own hearthstones. So that, after all the effervescence of a great public discussion, it will be found that the people have come to a decision for themselves, of which perhaps even the press gives no intimation until it is wanted for use, and is then found to be unanimous. From all that has been said, it follows that the influence of the press and of particular journals in the United States may be easily over-estimated by foreigners. The fact of a newspaper having an enormous circulation would seem to be a fact presumptive of its possessing a large influence. It is not so, however. It may owe its large circulation to the peculiar enterprise with which it is conducted, or to its general correspondence with the views of its subscribers, or to the ability of its editors. But even then, if such a newspaper has shown itself wanting in principle, or even incapable at times of discussing a great topic fairly and dispassionately, or has been betrayed into unseemly personalities, it so far loses an influence which it is ever afterwards very difficult to regain. It would be invidious to take an illustration from the living, but the late Henry J. Raymond, of the *New York Times*, furnishes one from the dead. He was not of the highest order of talent; but he was of thorough, large, and liberal culture: emphatically a many-sided man, of dispassionate temper and calm judgment. He was liable to error, and committed some grave political mistakes; but he was so thoroughly honest, so purely a gentleman, so kindly, and so entirely free from asperity, that he wielded a peculiar influence which few newspaper editors in any country have ever attained. When he died, a year ago, the whole nation was moved with an emotion of sympathy such as it had never experienced since the assassination of President Lincoln. Add to this, that the developement of the electric telegraph has almost wholly decentralised the sources of information and of opinion in the United States. There was a time when all news from Europe and other foreign countries was first received in New York, and received from that radiating source by the public in the interior only as contained in the New York newspapers.

and accompanied by their comments. But now, Cincinnati, Chicago, St. Louis, San Francisco, and other great cities are, in point of intelligence, as near to Europe as New York is, and their editors freely express their views on public topics, without waiting for those of any other commentators. This decentralisation has greatly promoted the independence, freedom and vigor of national thought. From all that has been said, it is evident that the public of the United States must be likened to a great debating society, and that whoever mistakes the public processes of its thought for its ultimate convictions, commits a great error.

THE COMMENCEMENT OF THE PEOPLE'S DEBATE.

The proposed treaty, the diplomatic correspondence relating to it, and Senator Sumner's speech, were all published. They took the public by surprise, but they were "public information," and so the discussion began. Many newspapers adopted Senator Sumner's positions, and endeavoured to enforce them by a representation of his arguments, and by others of their own. Others took different views.

MR. JOHN STUART MILLS' MISTAKES.

A publication was soon afterwards made in London, entitled : "The relations between America and England : a reply to the late Speech of Mr. Sumner, by Goldwin Smith, sometime Professor of Modern History in the University of Oxford, now Professor in the Cornell University, Ithaca, New-York" This publication has a preface signed "J. S. M.", generally ascribed to Mr. John Stuart Mill, and here assumed to be correctly so ascribed. This preface contains the following language :—

"The extraordinary demands by Mr. Sumner, his deliberately making out a bill of damages, and putting down in black and white figures representing hundreds of millions sterling, for the moment startled the English public, and the common

question in our streets was, *Is this the general feeling in America?* At once there arose a desire to hear from some one we knew in America—some intelligent and impartial friend—who would tell us the real state of public feeling over there, and advise us for the best. That friend has spoken, and his speech is now before the reader."

The first mistake of Mr. Mill is in supposing that this speech is in any sense a "*reply to the late speech of Mr. Sumner*", as will be shown under the next heading. The next mistake is in a confused attempt to express his own meaning. Does Mr. Mill mean that Mr. Sumner's demands are "*extraordinary*" because they are not founded in justice; or because they are estimated in "*a bill of damages*;" or because they are "*put down in black and white*;" or because they "*represent hundreds of millions sterling*?" The fair inference is that if "*the bill of damages*" were included within figures representing only a few millions sterling, it would be paid if it were just; but that no claim "*representing hundreds of millions sterling*" can by any possibility be just, or ever paid. Is this the standard of integrity of the British merchant? Of the British public? Of the British Government?

The next mistake of Mr. Mill is in calling this speech of Mr. Goldwin Smith an exposition of "*the real state of public feeling over there*." It is not such, nor does it even pretend to be. It is only an appeal to the public against permitting itself to be influenced by a feeling assumed to be likely to be created by Senator Sumner's speech. It is an able, well-tempered, eloquent appeal, distinguished more for rhetoric than logic, and nothing more.

MR. GOLDWIN SMITH'S DISCOURSE,

which was delivered before the members of Cornell University, is improperly styled "*a reply to Senator Sumner's recent speech*," inasmuch as it neither states Mr. Sumner's arguments, nor attempts to reply to them. He makes many mistakes, which are worthy of being mentioned.

MR. GOLDWIN SMITH'S FIRST MISTAKE

consists in imagining the existence of an antecedent national antipathy on the part of the United States towards the British people, arising "partly from that old quarrel, which is so dead that it ought by this time to be buried"; "partly from a difference of institutions," and mainly because the two nations are ignorant of each other." Mr. Goldwin Smith is well known and highly esteemed by the American public. He is professor in the Cornell University in the state of New York, a noble benefaction, which has made the first great recognition ever made of the claims of technical education, and leads in the great movement which it is hoped will emancipate our youths from the cloistered mode of instruction. But he is a comparative stranger in the United States, where I have lived all my life, and more than three-fourths of whose states I have visited. He has heard expressions of antipathy to Great Britain from which he has formed a rapid generalisation; but this must have been an intensely provincial expression, or came from a class of editors who consider the form of a republic as absolutely essential to liberal institutions, or from an order of politicians who wish to conciliate a class which exists in the British dominions as well as in the United States (1). I am not unwarranted in asserting that before the breaking out of our civil war the general feeling in the United States towards the British people was one of kindness. Their history was our history, for we had no other, until about ninety years ago. Their poets, their statesmen, we claim as our own; their kings are ours; her Edwards and

(1) Strangers must not be misled by what our candidates for office say when they are before the people, previous to election. Mr. Dickens tells a story of a candidate for election to Parliament, who, after much persuasion, consented to kiss a baby which was to be ready for the purpose at a certain point of the route, but it was expressly stipulated in his favour that its face should be washed beforehand. "He has kissed the baby! He has kissed two babies! He has kissed all the babies!" shouted the delighted agent. Our candidates in America are also apt to kiss the babies presented to them on such occasions, without always stipulating for clean faces; but with us, as in England, there is frequently a remarkable solution of continuity between promise and performance.

Henrys ; and last, but not least, the man from Huntington. How our Irving delighted to describe the country scenes of England, where our ancestors dwelt ; how even the sarcastic Hawthorne showed himself genial while treating of " Our Old Home." These themes are so familiar, and are so often recurred to on festive occasions, that " common blood, common religion, and common literature " have become the subject of satire ; but they come from such a deep-seated, abundant well-spring of true feeling that their expression can never be degraded into a platitude. And as to the war of the revolution, the men are dead who fought our battles then. The war of 1812 never entered into the national feeling as a matter of resentment. Indeed, the prevailing sentiment now is, that we went into it needlessly, and came out of it without accomplishing anything which we sought to obtain. Even in our own personal experience, the bereavements which we suffer, and the resentments which we entertain, come very soon to exist only in memory, and not in feeling. What an absurdity, then, to think that the historical resentments of the revolt of 1776, in which we were successful, have perpetuated themselves to the third generation ! When we read of that contest, we cannot forget the generous support we received in both houses of the British Parliament ; still less the magnanimous words of honest kindness with which even obstinate George III. received John Adams, our first Minister to the British Court, after the recognition of our Independence ; the man of all others who had done most to sever the thirteen colonies from the British Crown. It is therefore not true that we had any antecedent prejudice against the British people or its form of government ; but, on the contrary, it is true that we expected a warm sympathy in our behalf.

As to any prejudice against British institutions, or ignorance of them, that matter has been answered already in the first part of this Essay.

MR. GOLDWIN SMITH'S SECOND MISTAKE

is in assuming that : " this is the speech of the organ of the Senate, delivered with the concurrence of all his colleagues."

There is nothing more unwarranted than this assumption, which proves nothing except this: how difficult it is for even our friends to understand us, until they have resided a long time in our midst. "All his colleagues" did not even presumptively concur in it merely because they listened to it, for that they were bound to do. They cannot be assumed to have "concurred" in it because they removed the injunction of secrecy, and allowed it to be published, for that courtesy, after the fate of the treaty had been decided, was almost equally inevitable. Besides, they naturally wished themselves to see in print an able speech, which must have been impressive when delivered, and to weigh its principles and arguments deliberately.

*Segnius irritant animos demissa per aurem,
Quam quæ sunt oculis subjecta fidelibus.*

They did not necessarily "concur" in it because they voted with Mr. Sumner to reject the treaty, as has already been shown; and it is already notorious that many of the Senators did not think themselves bound to either accept or reject all Mr. Sumner's positions, but voted to reject the treaty because they agreed with him that it recognised no liability of any kind, would not settle any principle whatsoever, and was not intended to settle any principle. Nor could it be said that all Mr. Sumner's colleagues "concurred" in his speech, because when it was concluded they gathered around him and congratulated him upon the effort. It was a splendid speech, glowing with brilliant rhetoric, high morality, and patriotic eloquence, and of a logic so close, that his postulates once admitted his conclusions are inevitable. But in the United States the asperities of political warfare have passed away, with the general improvement in the morals and the amenities of life, as they have in England and elsewhere. Even the Federals and Confederates, in the late civil war, were not by many degrees so embittered against each other as were the Democrats and Whigs in the great contest over the United States Bank in 1832. We are proud of our able men; and political opponents pay each other the courteous meed of all deserved compliment. A great debater will congratulate his opponent on an elaborate speech, with a sincerity all the greater

because he does not precisely know how he will be able to answer it on the morrow. If it be allowable to use a further illustration, which may be said to be somewhat local in its character, it may be found in the person of a Senator who has recently come into the Senate from my own state, to whom his warmest political opponents point with pride as being equal in general, varied, and special attainments, to any man in the British Parliament. We are proud of such men, and that we have many such ; and proud that we *are* proud of them, however much we may differ from them politically ; but by no act of courtesy to each other, still less by one of a merely official character, or by voting with each other, can they be said to concur with each other in opinion, or to be “ organs ” of each other.

Nor can it be said that Mr. Sumner was the organ of the Senate because he was the chairman of the committee on Foreign Relations, which reported to the Senate that the treaty ought not to be confirmed. What took place in the committee is thus related in a letter from Mr. Thornton, the British Minister at Washington, to Lord Clarendon, under date of Feb. 22, 1869 :

“ I now learn that on the 18th instant, at the meeting of the Senate Committee on Foreign Relations, its chairman, Mr. C. Sumner, brought forward the above-mentioned Convention, and after making a short comment upon its contents, and stating that it covered none of the principles for which the United States had always contended, recommended that the committee should advise the Senate to refuse their sanction to its ratification. Six out of seven members out of the committee were present, Mr. Bayard, Senator from Delaware, being absent ; but his six colleagues, as I was told, voted, without any discussion or observations, adversely to the Convention. ’

So that, although Mr. Sumner was the “ organ ” of the committee of the Senate, and as such made a report adverse to the treaty, it does not appear that even one of the committee, or a single member of the Senate, agreed with him on any point except this : that the treaty ought to be rejected. They may have concurred with him on all points, but Mr. Goldwin Smith had no right to assume that they did on any.

PRESIDENT WOOLSEY'S REVIEW.

As a part of this People's Debate, there was an able production commonly called by the above title. But the position and character of this gentleman are hardly described by the designation "President of a college" which has sometimes been applied to him. He is the president of Yale University, which is of the highest rank among our educational institutions, and embraces colleges of letters, technical science, law, medicine and divinity. He is a clergyman by profession, but a gentleman of large culture in international, constitutional and municipal law, and recognised every where as a profound jurist; the president of the law college of the University, whose diploma confers upon its holder the means of being called to the bar. His review has made a profound impression in the United States. Its substance may be thus briefly stated.

THE PROCLAMATION OF NEUTRALITY.

"The question of friendliness or unfriendliness of the British Government towards the United States at the time of the issuing of the proclamation of neutrality, and recognising the Confederates as belligerents, is not to be considered, if the issuing of the proclamation was such an act as was justified by the facts then in possession of the British Government; that is, if it then had good reason for believing that hostilities had already commenced in the United States." After a full and exhaustive review of the facts and of the law, President Woolsey comes to the conclusion: that a state of war did so exist; that our executive and legislative authorities had recognised it; that our Supreme Court have since so decided; and that, although the British Government manifested a willing haste in issuing the proclamation, it is not to be charged with malignity or illegality for so doing, and consequently not to be held responsible for any results of that act. That belligerency is not local, and a belligerent by land does not cease to be such by escaping out to

sea. That no apology ought to be required of the British Government for the issuing of the proclamation, because apologies can be demanded only for violations of international law, and not for unfriendly feelings, which are only sins of the heart.

THE "ALABAMA" QUESTION.

President Woolsey then states the facts in regard to the war vessel *Alabama*, in substance as they are above stated, and proceeds, by a review of principles and precedents, to establish the following propositions:

That the British Government was bound to observe neutrality in the case in hand, and *that any existing imperfection in its own neutrality laws, affords no excuse for a failure to observe this duty of neutrality.*

That the British Government, whether it acted wilfully or not, in permitting the *Alabama* to escape, was guilty of a violation of neutrality in so doing, and is responsible for the consequences of the act. The question of the rule or measure of damages he does not discuss. He expresses a regret that the treaty was rejected by an almost unanimous Senate.

FURTHER DISCUSSIONS BY THE PUBLIC.

As a part of this public discussion, the views of President Woolsey were not only largely expressed and enforced, but it was also said:

That even admitting belligerency did not exist at the time when it was recognized by the British Government, it did in fact exist beyond a doubt at the time when the *Alabama* escaped from Liverpool, and that if she had carried a prize the next day into any port in the world, the courts of that country would have been compelled to acknowledge the belligerency, even if its Government had not already done so. That we had no especial reason to expect or demand the sympathy of the British Government in our struggle, on account of its anti-slavery character;

at least not until it had assumed that aspect. That in all our previous contests with the slave power we had quietly submitted to its demands. We had yielded in 1819-20 on the Missouri compromise question, which consecrated to slavery all the territories south of 36° of north latitude, and prohibited it north of that line; that we had finally repealed even that restriction; that we had passed Fugitive Slave laws; and that even when the civil war broke out, President Lincoln declared that he was "for the Union, with slavery, if necessary, but without it, if it must be." That we had no reason to complain of the goodwill of the British Government or people after an uncompromising war came to be waged against slavery itself. That it is true that Mr Gladstone had said, in the House of Commons, that "Jefferson Davis had created a nation;" but he did not say that he rejoiced at the fact, which seemed to be apparent enough to justify the expression, and that this was at a time when our reverses were such that it was a common thought and expression amongst ourselves "that we were fighting for a boundary." It was said, too, that the secession of the Confederate States was not a sham rebellion, like that attempted to be got up by Walker in Nicaragua, and afterwards in Honduras, or doubtful like the one existing in Cuba. It was what it called itself, a Secession, a falling off of eight millions of people from the other 28 millions, and this Confederate power was complete in all the three-fold executive, legislative, and judicial organisation which characterise civilised governments. There was a complete unity—spontaneous or forced—within, and no opposition except from without. That Lord John Russell, it was true, had spoken in the House of Commons of the "late *United States*," but that even that was an epigrammatic expression too strong to be resisted under the circumstances, and that probably its utterance afforded to its noble author some of "that consolation which we all so readily afford to ourselves for the misfortunes of our friends." That undoubtedly Mr. Laird, the builder of the *Alabama*, was cheered by a portion of the House of Commons when he boasted of that fact, and denounced Mr. Bright as our friend; but that if we were rightly informed, there have existed Tittlebat Titmouses in that "body of British gentlemen," who expressed the views

of their constituents, and amused their fellow-members by the vocal imitations of cocks, calves, and other animals; that it was probably they who changed their usual brayings into cheers for Mr. Laird; that it was not Lord John Russell, Mr. Gladstone, Mr. Cobden, Mr. Bright, and their political associates who cheered on this occasion; nor was it to be believed, without positive proof, that Mr. Disraeli, or Lord Stanley, or any gentlemen of that stamp participated in it. That it was true that we could see now that British intervention, and any and all other foreign intervention, would not have been successful, but would have only hastened those mighty efforts which finally put an end to the war; but that the friendliness of the British government in this respect must be judged by the condition of things as they appeared at the time. That we had no cause of complaint against the British government or people, for its conduct towards us after war was finally against slavery; but, on the contrary, we were indebted to both for sympathy and encouragement, under the pressure of great domestic evils in England resulting from our civil war, and which it required great fortitude to endure.

But it was also said that the British government, having once violated its neutrality by allowing the *Alabama* to escape and make war upon us, then permitted Confederate agents to ply their trade openly in Great Britain, sell Confederate bonds, pledge cotton for their redemption, and carry on all kinds of business and negotiation, the only object of which was to furnish arms and ammunition to the Confederate cause.

Those clauses in the proposed treaty were pointed at which recognised *each individual claim* as a distinct *case*,—not all claims of the same kind as constituting a *class* of cases,—so that one victim of the British-Alabama cruiser might have his claim allowed by an arbitrator chosen by lot, and the next claimant, under precisely the same statement of facts, might have his claim disallowed by another arbitrator, also chosen by lot.

THE EFFECT ON THE BRITISH PRESS.

The British Press, looking upon the effervescing surface of the seething waters of this great debate, seemed for once to have lost its coolness and judgment. Forgetting the characteristic of excitability which it had so often fastened upon us, it assumed that we had definitively adopted propositions which we had only begun to discuss. A slight effort of memory should have corrected this hasty judgment. It was not many years since the whole people of the United States were greatly excited upon the question of the North-Eastern Boundary, and armed men were pouring into the Aroostook regions, to take military possession of the disputed district, and to hold it against the world. But the people assented, without a murmur, to the settlement of the dispute by the Ashburton Treaty. Afterwards, when we claimed $54^{\circ} 40'$ North latitude as the boundary between Oregon and the British possessions, foreigners who did not thoroughly know us, might well have thought that the popular sentiment was, "fifty-four forty or fight," as some of our orators proclaimed, with delightful alliteration. But something about the forty-ninth degree was finally accepted, with general concurrence. In a more recent instance, when Commander Wilkes took Messrs. Mason and Slidell out of the British steamer *Trent*, our people applauded the patriotic boldness of the act; but they nevertheless assented to the surrender of those gentlemen by our Government; and the only reluctance felt by our people, it is worthy of note, arose from a brutal insult in a London publication, in which a female was represented leaning upon a loaded cannon, with a lighted match, and the whole labelled, "Britannia waiting for an answer," as if we needed a threat to set us in the line of our duty. Perhaps it is wrong to characterize this as "a brutal insult." The same publication habitually represents the Pope, the spiritual bishop of probably one-third of the British people, as an old woman in a three-storied night-cap. Possibly both these instances are only stupendous British jokes, too deep for the comprehension of strangers. The British editors forgot the

excitement of the people of the United States after the close of the war and the assassination of President Lincoln, when, in the blindness of their great grief, it seemed as if they were ready to follow the indications of their new President, and to punish treason "by hanging a few hundreds of the Confederate chiefs," and that still no one has been either hanged or tried for treason. The nation was shocked but not convinced, when several of the confederate chiefs were charged, in a public proclamation, with complicity in the assassination of President Lincoln. They have long stood completely exonerated from even suspicion by the magnanimous judgment of the people, who wonder, in their simplicity, why the charge is not withdrawn with the same solemnity with which it was made. But having overlooked all these instances, and having thus misjudged, the British press proceeded to lash itself and the British public into the greatest state of excitement. The great British Lion was roused from his peaceful slumbers, made to lash himself fearfully with his tail, and to growl in thunder tones that he would not be terrified by threats (where none had been uttered); that he would submit to no demands inconsistent with his honour (where none had been made); that if the United States went to war he would ruin their commerce (which the *Alabama* had already destroyed); and that "Britons never, never, never would be slaves." Having made this exhibition, the noble animal again subsided into repose. The first effect which this explosion produced in the United States was, that we enjoyed one good, long, hearty, national laugh, the first we have had since the commencement of our civil war. We had at last discovered the true place of the British Lion in the grand international menagerie, and the precise spot to touch to make him disport himself for the edification of all the peoples of the earth. We had also demonstrated beyond a doubt, that the British were not an excitable or effervescing people, like their American cousins.

The next effect was a general sentiment of indignation at what was taken to be a declaration on the part of the British people, that they would never acknowledge that they had done us any wrong, or make any reparation for it. Whether or

not we committed the same error of judgment in misinterpreting their sentiment that they had themselves just committed in regard to ours, time only can disclose.

PRESENT AMERICAN SENTIMENT.

As to what the Government of the United States will do or propose, it is not within the province of this Essay to offer even a surmise. But that the sentiment of the people has finally worked itself clear to a fixed result, there is no doubt. They do not agree with President Woolsey that it is to be regretted that the proposed treaty was rejected by an almost unanimous vote of the Senate. On the contrary, they think that it was properly rejected, and they are indignant that such a treaty should ever have been proposed. But even in this they are just, and while they are indignant that the British Government will not assent to a treaty which shall recognise some principle, as well as provide for the adjustment of private claims, they visit their indignation for the concoction of this treaty upon the proper parties.

WHO IS RESPONSIBLE FOR THE PROPOSED TREATY ?

Able British writers have ascribed this practical defect to the working of their own institutions : that the uncertain tenure of office in any existing ministry presents two vicious temptations to the cabinet ; first, not to undertake any great measure of reform which is likely to be resisted, for fear that they may not be able to carry it through during the life of the ministry,—*quieta non movere* ; and, secondly, to hurry pending measures to their accomplishment, so that the ministry may have the credit of them. This practical working defect exists also in the United States. President Johnson and his Secretary of State, Mr. Seward, knew, for more than a year before their retirement, that they were to leave office in March, 1869. They both became anxious to negotiate a treaty during their term of office for the settle-

ment of the *Alabama* claims. Mr. Reverdy Johnson was appointed Minister to the British Court for that purpose, and arrived in England in August, 1868. From that epoch the diplomatic correspondence, as published by both governments, shows the utmost eagerness on the part of the American Secretary to have a treaty of some kind concluded. He seems to have laid aside that habitual persistency which had hitherto been so characteristic of his policy. Demands for the settlement of the principles involved in the case, which had hitherto been advanced as peremptory, were laid aside. Other claims were attempted to be couched under ambiguous phrases (¹). All this was proposed by the Secretary and Minister, and assented to by the British Government. The British Government is not to be blamed for assenting to what was proposed to it on this particular occasion. The American *government* is not to be blamed, for the Senate is the vital executive part of the government, so far as the power to make treaties is concerned; and it never proposed

(¹) For example: Mr. Reverdy Johnson writes to Mr. Seward, under date of Nov. 10, 1868:—

"It is proper that I should give, as briefly as may be necessary, my reasons for assenting to the Convention, or rather to some of its provisions: 1. You have heretofore refused to enter into an agreement to arbitrate the *Alabama* claims unless this government would agree that the question of its right to acknowledge as belligerents the late so-called Southern Confederacy be also included within the arbitration. You will see by the terms of the first and the fourth articles that that question, as well as every other which the United States may think is involved in such claims, is to be before the Commissioners, or the arbitrator. *This is done by the use of general terms and the omission of any specification of the questions to be decided.* And my authority of agreeing to this is found in your original instructions of the 20th of July last, and is indeed to be found in the correspondence between yourself and my predecessor regarding these claims."

This use of "general terms" led to precisely the same result as Byron's

"Explaining metaphysics to the nation;

I wish they would explain their explanation."

Lord Clarendon took precisely the same view of the Convention that Mr. Sumner did, when Mr. Reverdy Johnson called upon him to modify the Convention, as he then stated to Mr. Johnson that it "was for the settlement of claims between the subjects and citizens of Great Britain and the United States, * * *the two governments not having put forward any claims on each other,*" etc.—The Earl of Clarendon to Mr. Thornton, March 22, 1869. Parliamentary Document, North America, No. 1, 1869. No. 34.

the treaty or consented to it. The responsibility, then, belongs wholly to the President, Secretary, and Minister who attempted to negotiate the treaty.

THE TWO VIEWS IN THE UNITED STATES.

All are agreed that the questions at issue between the two countries will not lose their importance or vitality by being left in an unsettled condition. There is a party there that would prefer that they should be so left. Let England go to war with any other Power, say they; her people are too brave to refuse to go to war with any nation whatsoever to vindicate the national honour, for fear of any injury we could do them. Then will be our opportunity. We can send *Alabamas* to sea by the score. We have them ready now. We could get more. Perhaps we could get them from the Mersey; there is no telling what a patriotic citizen of the world might do for a consideration. Where will British commerce be then? If one swift steamer, with a long gun and a torch, could inflict so much injury, what could a hundred do, under this British practice of neutrality?

But this is by no means the prevailing feeling. The prevailing feeling towards Great Britain is still one of kindness; but we feel aggrieved that we have been wounded in the house of our friends, and that she refuses us any reparation. To do her a retributive injury would be only to work a revenge, and would be in no sense a reparation for a great wrong. There is never, in deed, on earth a complete reparation for a great wrong. But we are endowed with such sentiments and sympathies that the acknowledgment of wrong and an attempt to make reparation is generally accepted as such. But there should be no equivocation or use of doubtful "general terms" in any treaty. Let the British government plainly acknowledge its liability, define for what it is liable, and provide a mode of ascertaining damages without any resort to lot. And this class most fully concur in the concluding words of President Woolsey:—

"The English may be assured that, whatever becomes of the Alabama claims, the memory among us of what they felt and

allowed in the late rebellion will not soon sleep, if things remain as they are; and that the next war in which they become involved will see more than one Alabama issuing from our ports to rob and burn their shipping. The United States, on their part, need and demand some assurance that the present loose practice in respect to neutrality will not be persisted in hereafter. Nor is it well for us—either for our character or prosperity—to chew the cud of wrath and brood over supposed wrongs. It is far more important to agree on general rules for the future than to determine how the claims for damages are to be adjusted. War now, to no small an extent, is carried on by neutrals and for neutrals: they are the capitalists in the workshop of death. Let the countries agree by treaty that hereafter, when either is a belligerent, no ships of use for the purposes of war shall be built in and sail from the ports of the other, being a neutral, without heavy bonds given by the parties interested, restraining such vessels to an innocent employment. Let blockade running and the export of contraband articles be placed under similar restrictions. Let a trade more bloody than the slave trade be stopped, as far as law and police can stop it. When it is once expressed in honest treaties that such trade is to be frowned upon, the future of the world will be more hopeful."

Had such a treaty been proposed, and the other governments of the earth been invited to join in the principle declared by it, it would doubtless have been adopted sooner or later. It would not have been the first time that a principle adopted by treaty between the two nations had come to be accepted by all civilised governments. It would, if adopted, impose a very heavy burden and often heavy liabilities for damages upon the United States, for we have a sea coast which, stretched out in a straight line, would reach from London to Calcutta, over which we should be bound to extend an absolutely repressive police, in case of war between two foreign powers, or be answerable for the consequences.

PRESIDENT GRANT'S MESSAGE TO CONGRESS,

which was delivered early in December, 1869, contains a condensed statement of what may be accepted as the public opinion

of the United States. The manner in which it was received and commented upon by a portion, at least, of the British press cannot fail to be very suggestive to careful observers who reside outside of the British dominions. President Grant thus discusses

THE QUESTION OF BELLIGERENCY.'

"For more than a year a valuable province of Spain and near neighbour of ours, in whom all our people cannot but feel a deep interest, has been struggling for independence and freedom. The people and government of the United States entertain the same warm feelings and sympathies for the people of Cuba in their pending struggle that they manifested throughout the previous struggles between Spain and her former colonies in behalf of the latter. But the contest has at no time assumed the conditions which amount to a war in the sense of international law, or which would show the existence of a *de facto* political organisation of the insurgents sufficient to justify a recognition of belligerency. The principle is maintained, however, that this nation is its own judge when to accord the rights of belligerency either to a people struggling to free themselves from a government they believe to be oppressive, or to independent nations at war with each other."

He then proceeds to

OUR RELATIONS WITH ENGLAND.'

"Toward the close of the last Administration a convention was signed at London for the settlement of all outstanding claims between Great Britain and the United States, which failed to receive the advice and consent of the Senate to its ratification. The time and the circumstances attending the negotiation of that treaty were favourable to its acceptance by the people of the United States, but its provisions were wholly inadequate for the settlement of the grave wrongs that had been sustained by this government, as well as by its citizens.

"The injuries resulting to the United States by reason of the course adopted by Great Britain during our late civil war, in the increased rates of insurance, in the diminution of exports and im-

ports, and other obstructions to domestic industry and production, in its effect upon the foreign commerce of the country, in the decrease and transfer to Great Britain of our commercial marine, in the prolongation of the war, and the increased cost, both in treasure and in lives, in its suppression, could not be adjusted and satisfied as ordinary commercial claims which continually arise between commercial nations; and yet the convention treated them simply as such ordinary claims, from which they differ more widely in the gravity of their character than in the magnitude of their amount. Great even as is that difference, not a word was found in the treaty, and not an inference could be drawn from it to remove the sense of the unfriendliness of the course of Great Britain in our struggle for existence, which had so deeply and universally impressed itself upon the people of this country. Believing that a convention thus misconceived in its scope and inadequate in its provisions would not have produced the hearty, cordial settlement of the pending questions, which alone is consistent with the relations which I desire to have established between the United States and Great Britain, I regarded the action of the Senate in rejecting the treaty to have been wisely taken in the interest of peace and as a necessary step in the direction of a perfect and cordial friendship between the two countries. A sensitive people, conscious of their powers, are more at ease under a great wrong wholly unatoned than under the restraint of a settlement which satisfies neither their ideas of justice nor their grave sense of the grievance they have sustained. The rejection of the treaty was followed by a state of public feeling on both sides which I thought not favourable to an immediate attempt at renewed negotiations. I accordingly so instructed the Minister of the United States to Great Britain, and found that my views in this regard were shared by Her Majesty's Minister. I hope that the time may soon arrive when the two governments can approach the solution of this momentous question with an appreciation of what is due to the rights, dignity, and honour of each, and with the determination not only to remove the causes of complaint in the past, but to lay the foundation of a broad principle of public law which will prevent future differences, and tend to firm and continued peace and friendship.

THE RECEPTION OF THIS MESSAGE IN ENGLAND.

Desirous as we have always been to believe in the friendliness of the British people towards us, the reception which the President's Message met with in England by a portion of the press demonstrated that there still exists there a party which entertains for us the same malignant hatred which it manifested during our civil war; the same openly-expressed sympathy for the Confederate cause; the same sneers for the cause of the Union; the same deliberate denial of those fundamental principles which underlie the discussion of the matters in difference between the two nations. On the whole, however, it must be said that the President's Message was received and discussed fairly and candidly.

But a mistake was not uncommonly made by going outside of the Message itself to find some standard of interpretation, instead of interpreting it by its own context. It was said that President Grant professes to consider the recognition of belligerency as the principal cause of our grievances, and yet gives such a definition of the right to recognise belligerents as is inconsistent with these claims. The answer to this view is, that the Message, while insisting upon "the injuries resulting to the United States by reason of the course adopted by Great Britain during our late civil war," does not define the point at which they commenced, or the acts from which they resulted. The injuries specified can all be logically included in the vast list of those resulting from the devastations of the Alabama and her kindred fleet of pirate ships. Thus interpreted by its own context, there is no inconsistency with itself in the Message.

OTHER MISTAKES MADE.

Other mistakes were made in England, by those whose candour and feeling of justice were apparent, and which mistakes show how greatly public feeling has been misled by a partisan discussion of the subject by a portion of the public press. It was

said: "We had done all we could to settle the dispute as a family matter, and had failed. The only course now open was to refer the matter to the decision of foreign nations." The answer to this is, that *the British government has never done anything to settle the dispute.* It has never admitted its liability for anything. It has only agreed to a treaty for the settlement of *private claims*; but the settlement of the dispute, *the claim of the government of the United States upon the government of Great Britain* for violation of its neutrality during our civil war, is not included in the treaty, nor has the government of Great Britain ever done anything to settle it. *It has always refused to do anything towards settling the principles involved in the case.*

The text of the proposed Treaty by its very terms includes only claims made by subjects and citizens, and not by one government upon the other. Afterwards, when Mr. Reverdy Johnson found that his own countrymen did not think that the claims of our government upon the British government were included in the general terms of the proposed Treaty, he called upon Lord Clarendon, and proposed the following amendment to article I of the proposed Treaty :

" Article I. The High Contracting Parties agree that all claims on the part of Her Britannic Majesty's government upon the government of the United States, and all claims *on the part of the government of the United States upon the government of Her Britannic Majesty*, and all claims on the part of subjects of Her Britannic Majesty upon the government of the United States"

Lord Clarendon's statement of this interview is in the following terms, in a letter under date of March 22nd, 1869, to Mr. Thornton :—

" Mr. Reverdy Johnson called upon me to-day to propose that an amendment, of which I enclose a copy, should be made to Article I. of the Convention, as he thought it would satisfactorily *meet the objections entertained by the Senate* to the Convention, and would secure its ratification by that body.

" I remarked to Mr. Johnson that his proposal would intro-

duce an entirely new feature into the Convention, which was for the settlement of claims between the *subjects* and *citizens* of Great Britain and the United States; but that *the two governments not having put forward any claims on each other*, I could only suppose that *his object was to favour the introduction of some claim by the government of the United States for injury sustained on account of the policy pursued by Her Majesty's government.*

“ Mr. Reverdy Johnson did not object to this interpretation of his amendment, but said that if claims to compensation on account of the recognition by the British government of the belligerent rights of the Confederates were brought forward by the government of the United States, the British government might, on its part, bring forward claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them.”

This proposed amendment gave rise to some further correspondence, but was finally rejected by the British government ⁽¹⁾. It is to be remarked that Mr. Sumner and the Senate of the United States could not have had this correspondence of the Earl of Clarendon before them when they took the same view that he did of the proposed treaty, namely, that it would not settle, and was not intended to settle, any claim of the government of the United States upon the British government. The last act of the British government, so late as April 8, 1869, was to refuse to submit any such claim for adjustment. It is difficult, then to see where any authority is found for the oft-repeated assertion that “ the British government had tried to settle this matter and had failed.”

THE UNFRIENDLINESS OF GREAT BRITAIN.

It is asked why this is now so much insisted upon. Why should President Grant, in his Message, say : “ Not a word was found

(1) Earl of Clarendon to Mr. Thornton, March 22, 1869, and to Mr. Reverdy Johnson, April, 8, 1869 : Parliamentary Document North America. No 1, 1869, pages 45, 46, 48 ; Nos. 34.40.

in the treaty, and not an inference could be drawn from it, to remove the sense of the unfriendliness of the course of Great Britain in our struggle for existence, which had so deeply and universally impressed itself upon the people of this country." The reason why this matter of unfriendliness is so much discussed is this :

The escape of the armed vessel *Alabama*, for the purpose of devastating our commerce, was a violation of neutrality on the part of the British government :

The British government, by permitting the *Alabama* to escape, was guilty of an act which was either one of ordinary negligence, or of gross negligence, or was an act deliberately committed with an unfriendly purpose :

If it was an act deliberately committed by the British government with hostile purpose, it was an act of war by the British government upon the United States (1).

Acts of governments, as well as those of individuals, often receive their interpretation from the subsequent conduct of the actors. The impression in the United States at the time was that the action of the British government in permitting the *Alabama* to escape was an unfriendly act. We should be glad to see, either in a proposed treaty, or elsewhere, something "to remove the sense of the unfriendliness of that course."

THE QUESTIONS AT ISSUE.

It is a matter of surprise that in the new discussion which has arisen upon this subject, the questions which first come up in their natural order have received but little attention. The natural order of discussion, where parties at variance really wish

(1) I am aware that the controversialists of the *Saturday Review* entertain a different opinion :—

"The damage inflicted on shipping by the *Alabama* would have been subjected, under the treaty, to arbitration; nor could alleged negligence in allowing a Confederate cruiser to escape be considered *under any circumstances a public offence offered to the government of the United States.*"

to approach each other, is to discuss the matters of smaller importance first, for if they cannot agree upon the smaller, they certainly cannot upon the greater. Instead, therefore, of discussing questions of belligerency, which are remote compared with the others, it would be more in the natural order of debate to discuss the following propositions:—

The British government was bound BY ITS INTERNATIONAL OBLIGATIONS to observe the duty of neutrality between the United States and the Confederate States, in the late civil war :

The British government did not observe that duty of neutrality in our late civil war, inasmuch as it permitted a British war-vessel called the *Alabama* to be built in British waters, equipped with a British armament, manned with British sailors, and then to make war upon the United States, and destroy their commerce : it is therefore liable for all the consequences of that act :

The British government, having thus violated its duties of neutrality, cannot shield, itself from responsibility on the pretence that its own neutrality laws were defective: for every civilised nation is bound to make its municipal laws equal to its international duties (¹).

The act of the British government in thus permitting the *Alabama* to escape, was either an act of ordinary carelessness or of gross and culpable carelessness ; or was a deliberate act committed with a wilful and unfriendly purpose : and so long as the

(¹) A nation cannot by negligence or otherwise create its own incapacity to perform its duties, and then make use of that incapacity as a defence. Otherwise, some nations would content themselves with such municipal neutrality laws as the King of Dahomey might be supposed to enact. If the British foreign enlistment laws were defective for the purpose of enforcing neutrality, the British government should have acted executively, and have asked an indemnity afterwards from Parliament, and would have done so if it had followed its own precedents where the law was found defective. This plea that the British government could not perform its *international* duties, because it had not provided itself with *domestic* laws for the purpose, sounds very much like the plea of infancy in an action at law upon a civil contract. The proposition that the British government shall sit in judgment upon its own acts is characterised by some British journals as an invitation "to sit upon the stool of repentance." This is doubtless an appeal to "British pluck."

British government persists in refusing itself, and in its own favour, to attribute a specific character to this act, the United States and the world have a right to attribute any character to it which antecedent, cotemporaneous, or subsequent circumstances will justify.

These are the first propositions which naturally come up in the order of discussion preliminary to the other great question :

SHALL THIS MATTER BE SETTLED, OR REMAIN AS IT IS ?

FURTHER DIPLOMATIC CORRESPONDENCE.

Since the preceding pages were put into type, a further diplomatic correspondence between the government of the United States and the British government has been published in a supplement to the "London Gazette" of December 24th, 1869, *by authority*. This publication, thus made in advance of an official communication to Parliament, must be regarded as an appeal to the public opinion of the world. But the most elaborate paper prepared and thus published by the British government will be found to possess a *forensic* rather than a *judicial* character, inasmuch as it devotes particular attention to what it evidently considers the weaker points of the adversary's case, while the strong points are either slurred over, or entirely disregarded.

PROPOSITIONS FOR SETTLEMENT.

Mr. Hamilton Fish, the Secretary of State of the United States, under date of September 25, 1869, writes as follows :—

"The President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain. Nor is he now prepared to speak of the reparation which he thinks due by the British government for the larger

account of the vast national injuries it has inflicted on the United States. Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise, in whatsoever manner."

This shows that the interpretation put upon the President's Message at page 61 of this Essay was the correct one. Mr. Secretary Fish thus continues :

" Although the United States are anxious for a settlement, on a liberal and comprehensive basis, of all the questions which now interfere with the entirely cordial relations which they desire to exist between the two governments, they do not now propose or desire to set any time for this settlement. On the contrary, they prefer to leave that question, and also the more important question of the means and method of removing the causes of complaint, of restoring the much desired relations of perfect cordiality, and the preventing of the probability of like questions in the future, to the consideration of Her Majesty's government. They will, however, be ready, whenever Her Majesty's government shall think the proper time has come for a renewed negotiation, *to entertain any proposition which that government shall think proper to present*, and to apply to such propositions their earnest and sincere wishes and endeavours for a solution, honourable and satisfactory to both countries."

Lord Clarendon, expressing his regret "that the Senate of the United States, in the exercise of the powers unquestionably conferred upon it by the Constitution" had rejected the proposed Treaty, declined to make any proposition for a settlement. Here was at least an opportunity lost. The British government could have availed itself of this occasion to put its own construction upon the character of its acts in the matter of the Alabama, and have proposed that as a basis of settlement. It preferred not to do so.

INTERNATIONAL DUTY OF NEUTRALITY.

Mr. Fish, the American Secretary, thus states this proposition : —“ The Queen’s Ministers excused themselves by alleged defects in the municipal law of the country. Learned Counsel either advised that the wrongs committed did not constitute violations of the municipal law, or else gave sanction to artful devices of deceit to cover up such violations of law.

“ We hold that the international duty of the Queen’s government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign Power. The municipal law was but a means of repressing or punishing individual wrong-doers; the law of nations was the true and proper rule of duty for the government. If the municipal laws were defective, that was a domestic inconvenience, of concern only to the local government, and for it to remedy or not by suitable legislation, as it pleased. But no sovereign Power can rightfully plead the defects of its own domestic penal statutes as justification or extenuation of an international wrong done to another sovereign Power.”

This is the proposition of the American Secretary, set forth in simple, clear, unmistakable terms, the first proposition, too, in the order of debate. What is the reply to it, made by the British Government? There is no reply. Not a word. And the world does not know to this day whether the British government measures its international obligations by the ethics of the law of nations, or by such domestic statutes as it may choose to pass on the subject,—making itself a law unto itself.

SUGGESTION OF AN AMNESTY.

Lord Clarendon, does, however, repeat with apparent approbation a proposal made by Earl Russell as early as 1865 (Parliamentary Document North America, No. 1., 1866, page 164), in these words :

“ I however asked Mr. Adams whether it would not be both

useful and practical to *let bygones be bygones, to forget the past, and turn the lessons of experience to account for the future.*"

Nothing could have more forcibly commended this style of appeal to the British American public than the fact that it had already been adopted by the great historiographer of the Pickwick Club. Speaking of the soldiers at Rochester, Mr. Pickwick had already recorded :

" Nothing can exceed their good humour. It was but the day before my arrival that one of them had been most grossly insulted in the house of a publican. The bar-maid had positively refused to draw him any more liquor ; in return for which, he had (merely in playfulness) drawn his bayonet, and wounded the girl in the shoulder.—And yet this fine fellow was the first to go down to the house next morning, and *express his readiness to overlook the matter, and forget what had occurred!*"

AND HERE THE MATTER RESTS.

Note.— I intended to state, in a note to page 49, that Messrs. Dana and Lawrence, the American editors of Wheaton's Law of Nations, both concur with President Woolsey, in his views on the subject of the acknowledgment of belligerency.

The renewed discussion of the Alabama matter has elicited the following avowal from one British journal, the London *Spectator* :

" The escape of the *Alabama* from the Mersey was, as we believe, due to a real act of negligence on our part, for which it is not only right on general international principles, but in the highest degree expedient for British interests, that we should be willing and even eager to make amends."

We should be glad to hail this as the beginning of the end.

NOTE.

FREEDOM OF THE PRESS IN FRANCE.

The author avails himself of a blank space in the printer's forms to add a note on this subject, which is suggested by an event occurring since the text was in print. Prince Pierre Bonaparte, a cousin of the Emperor of the French, conceiving himself aggrieved by the attacks of M. Rochefort, a French journalist, in the public press, sent word to him that he was ready to fight a duel with him. Thereupon it was arranged in M. Rochefort's office, that a third person, M. Grousset, a collaborator of his, should also challenge the Prince. M. Grousset sent two of his friends, M. Noir and M. de Fonvielle, to the house of the Prince with his challenge, M. de Fonvielle being armed with a revolver and sword cane. Why M. Grousset thus intervened, giving his challenge and therefore his proposed duel a precedence over that to which the Prince had invited M. Rochefort, does not appear. M. Noir and M. de Fonvielle were admitted to the presence of the Prince, and there, only they three being present, M. Noir was killed with a pistol shot by the Prince. The Prince was then arrested and is now in prison, to be tried for the homicide, on a charge of manslaughter, before a special tribunal called the High Court of Justice, and a Jury, composed of thirty-six members from the Councils General throughout the Empire. This special tribunal was created some years ago by the Constitution, and is analogous to that existing in Great Britain by which many hundred peers and peeresses of the realm have a right to be tried by their peers, if accused of felony; a right which they cannot disclaim, and one which has never been thought obnoxious to censure.

When the trial comes on, the first thing to be done, under the French method of procedure, will be the examination of the accused by the presiding judge, in the presence of the jury. The Prince will then testify as follows, which is the statement he reduced to writing immediately after the event took place: "When I went into the room to meet MM. Noir and Fonvielle, I supposed I was going to meet M. Rochefort's seconds. When I found that this was not the case, I refused to receive their challenge, and applied insulting words to them. M. Noir then struck me in the face with his hand, and M. Fonvielle drew a revolver and aimed it at me. I drew a revolver and shot M. Noir, feeling that my life was in danger."

This will in effect make the Prince a witness in his own behalf, leaving the consistency, probability, and credibility of his testimony to be determined by the jury, as many other civilized countries have mercifully provided. Other witnesses will then testify to the fact that immediately after the occurrence there were upon the face of the Prince the marks of a recent contusion, such as might be produced by a finger ring or the knuckles of a man's hand, and that a sword cane was left in the room by MM. Noir and Fonvielle. M. Fonvielle will then make this statement, which was reduced to writing immediately after the event: "M. Noir and I went to the Prince's house as bearers of a challenge from M. Grousset. I was armed with a revolver and sword cane. M. Noir was not armed at all. When the Prince found that we had not come on behalf of M. Rochefort, he assailed us with insulting words, and then, without any provocation whatever, shot M. Noir, and fired at me. I drew my revolver, and aimed at him, but it would not go off." But the position, manifest feeling and condition of excitement of this witness have already established themselves to be such, that the court will probably feel compelled to instruct the jury that they cannot properly convict the accused upon M. Fonvielle's testimony, unless it is conclusively corroborated by circumstances; and that in endeavouring to reconcile the testimony with the circumstances, they must adopt such a probable hypothesis as will necessarily exclude all other equally probable solutions. Journalists and others who are habitually called upon to determine questions of moral probability, and to investigate obscure matters of fact, can hardly doubt what the verdict will be.

But under this state of facts, every accused person being presumed to be innocent until he is proved to be guilty, and the highest charge against the Prince being only

that of manslaughter, a portion of the press, and especially the *Marseillaise* conducted by M. Rochefort, have assumed the guilt of the Prince, accusing him of wilful and premeditated murder, claiming the right of retributive assassination, denouncing the tribunal of justice by which he is to be tried, vilifying the whole Bonaparte family as assassins, and exciting the people and the army to revolt.

This is evidently not using the liberty, but the licentiousness of the press. The most seditious number of the *Marseillaise* was seized by the police. M. Rochefort is a member of the Legislative Body of France, and in order to prosecute him for his seditious libels, it was necessary to obtain the previous sanction of that body. The French Ministry asked for that sanction and it was granted. Many of the public journals in France and Great Britain, conceding the utterly licentious and unwarrantable degradation of the public press by M. Rochefort, still doubt the expediency of the measures taken against him. But while they admit that the French press must be brought into the subjection of liberty restrained by law, they do not suggest any other method than that proposed by the French Ministry.

There are four parties in France, two of which, occupying opposite extremes of political opinions, each believes that France belongs to it. The first is the Legitimist party, who hold that the government of France attaches by private inalienable right to the eldest living male of the elder Bourbon line. The second is the Red Republican party, who believe with Citizen Robespierre, whom M. Rochefort cited last week with enthusiastic unction, that the government of France belongs to any body of virtuous and tumultuous citizens who can obtain the control of Paris by force of insurrection. A third party is composed of Liberal Democrats, who wish to found a republic, issuing out of and based upon universal suffrage. The fourth party desire a Liberal Parliamentary Government of France, based upon public opinion as represented by universal suffrage, with a hereditary executive chosen by the nation. The principles of this party compel it to sustain the existing dynasty under its relinquishment of personal government, for every reason for an attack upon the executive of a parliamentary government wholly fails; and change of dynasty is revolution. It is thus with perfect consistency that statesmen whose first preferences were not for the Empire, and who were in opposition under the system of personal government, have loyally accepted office in the present Parliamentary Ministry, and that the Emperor has, with equal loyalty, accepted them as his Ministers. But no Liberal Parliamentary Ministry can successfully administer the government of a country so long as journalists like M. Rochefort are permitted to make daily publication of atrocious libels upon members of the Government, and to incite the mob and the army to revolt. This must produce a general, social, and political demoralization, in the face of which all civilized government will become impossible.

If this thing had happened in London, would not the police have seized the newspaper whose columns reeked with infamous assaults upon the Royal Family? Would not the offender have been expelled from Parliament? Would he not have been prosecuted for libel, and punished with the severest penalty of the law?

If the public press in France is to be brought into subjection to responsible liberty, it were ridiculous to begin with any but the greatest offender. Doubtless there are others amenable to the law, of more ability, of keener wit, and capable of being more dangerous than M. Rochefort; but up to the present time he has shewn himself the most violent and treasonable. The fate of free institutions in France will probably depend upon the issue of this attempt to reconcile the liberty of the press with the reign of law.

APPENDIX.

THE PROPOSED ALABAMA TREATY.

TEXT OF THE PROPOSED CONVENTION BETWEEN GREAT BRITAIN AND THE UNITED STATES, FOR THE SETTLEMENT OF ALL OUTSTANDING CLAIMS. SIGNED AT LONDON, JANUARY 14, 1869.

(The reader will bear in mind that this is a Convention for the settlement of private claims only, and does not include any claims of one *government* upon the other.)

WHEREAS claims have at various times since the exchange of the Ratifications of the Convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the Government of Her Britannic Majesty *on the part of citizens of the United States*, and upon the Government of the United States *on the part of subjects of Her Britannic Majesty*; and whereas some of such claims are still pending, and remain unsettled; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all *such claims* will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a Convention, and have named as their Plenipotentiaries to confer and agree thereupon, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

And the President of the United States of America, Reverdy Johnson, Esquire, Envoy Extraordinary and Minister Plenipotentiary from the United States to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I.

The High Contracting Parties agree that all claims on the part of *subjects of Her Britannic Majesty* upon the Government of the United States, and all claims *on the part of citizens of the United States* upon the Government of Her Britannic Majesty, including the so-called "Alabama" claims, which may have been presented to either Government for its interposition with the other since the 26th of July, 1853, the day of the exchange of the ratifications of the Convention concluded between Great Britain and the United States of America, at London, on the 8th of February, 1853, and which yet remain unsettled; as well as any other *such claims* which may be presented within the time specified in Article III of this Convention, whether or not arising out of the late civil war in the United States, shall be referred to four Commissioners, to be appointed in the following manner, that is to say: two Commissioners shall be named by Her Britannic Majesty, and two by the President of the United States, by and with the advice and consent of the Senate. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting, or declining, or ceasing to act as such, Her Britannic Majesty, or the President of the United States as the case may be, shall forthwith name another person to act as Commissioner in the place or stead of the Commissioner originally named.

The Commissioners so named shall meet at Washington at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, *upon all such claims* as shall be laid before them on the part of the Governments of Her Britannic Majesty and of the United States, respectively; and such Declaration shall be entered on the record of their proceedings.

The Commissioners shall then, and before proceeding to any other business, name some person to act as an Arbitrator or Umpire, to whose final decision shall be referred *any claim* upon which they may not be able to come to a decision. If they should not be able to agree upon an Arbitrator or Umpire, the Commissioners on either side shall name a person as Arbitrator or Umpire; and in each and every case in which the Commissioners may not be able to come to a decision, the Commissioners *shall determine by lot* which of the two persons so named shall be the Arbitrator or Umpire *in that particular case*. The person or persons so to be chosen as Arbitrator or Umpire shall, before proceeding to act as such *in any case*, make and subscribe a solemn Declaration, in a form similar to that made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such Arbitrator or Umpire, another person shall be named, in the same manner as the person originally named, to act as Arbitrator or Umpire in his place and stead, and shall make and subscribe such Declaration as aforesaid.

ARTICLE II.

The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. The official correspondence which has taken place between the two Governments respecting any claims shall be laid before the Commissioners and they shall, moreover, be bound to receive and peruse all other written documents or statements which may be presented to them by or on behalf of the respective Governments, in support of or in answer to any claim, and to hear, if required, one person on each side

on behalf of each Government, as Counsel or Agent for such Government, on each and every separate claim. Should they fail to decide by a majority upon any individual claim, they shall call to their assistance the Arbitrator or Umpire whom they may have agreed upon, or who may be determined by lot, as the case may be; and such Arbitrator or Umpire, after having examined the official correspondence which has taken place between the two Governments, and the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal.

Nevertheless, if the Commissioners, or any two of them, shall think desirable that a Sovereign, or Head of a friendly State, should be Arbitrator or Umpire *in case of any claim*, the Commissioners shall report to that effect to their respective Governments, who shall thereupon, within six months, agree upon some Sovereign or Head of a friendly State, who shall be invited *to decide upon such claim*, and before whom shall be laid the official correspondence which has taken place between the two Governments, and the other written documents or statements which may have been presented to the Commissioners in respect of *such claims*.

The decision of the Commissioners, and of the Arbitrator or Umpire, shall be given upon each claim in writing, and shall be signed by them respectively, and dated.

In the event of a decision, involving a question of compensation to be paid, being arrived at by a special Arbitrator or Umpire, the amount of such compensation shall be referred back to the Commissioners for adjudication; and in the event of their not being able to come to a decision, it shall then be decided by the Arbitrator or Umpire appointed by them, or who shall have been determined by lot.

It shall be competent for each Government to name one person to attend the Commissioners as Agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, hereby solemnly and sincerely engage to consider the decision of the Commissioners, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive upon each of such claims decided by him or them respectively, and to give full effect to such decision without any objection or delay whatsoever.

It is agreed that no claim arising out of any transaction of a date prior to the 26th of July, 1853, the day of the exchange of the ratifications of the Convention of the 8th of February, 1853, shall be admissible under this Convention.

ARTICLE III.

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, or of the Arbitrator or Umpire in the event of the Commissioners differing in opinion thereupon; and then and in any such case the period for presenting the claim may be extended to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners, or for the Arbitrator or Umpire if they differ, to decide in each case whether any claim has or has not been duly made, preferred, or laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this Convention.

ARTICLE IV.

All sums of money which may be awarded by the Commissioners, or by the Arbitrator or Umpire, on account of *any claim*, shall be paid in coin or its

equivalent by the one Government to the other, as the case may be, within eighteen months after the date of the decision, without interest.

ARTICLE V.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present Convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled and barred, and thenceforth inadmissible ⁽¹⁾.

ARTICLE VI.

The Commissioners, and the Arbitrator or Umpire appointed by them, shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ clerks or other persons to assist them in the transaction of the business which may come before them.

The Secretary shall be appointed by Her Britannic Majesty's Representative at Washington, and by the Secretary of State of the United States, jointly.

Each Government shall pay the salaries of its own Commissioners. All other expenses, and the contingent expenses of the Commission, including the salary of the Secretary, shall be defrayed in moities by the two Parties.

ARTICLE VII.

The present Convention shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged in London as soon as may be within twelve months from the date hereof.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

(L.S.) CLARENDON.

(L.S.) REVERDY JOHNSON.

(1) The "general terms" of this Article V. would include every claim of either government upon the other, although no such claim could be submitted under the Treaty. It requires a lawyer's argument to show that they would not be nevertheless settled and barred under this Article.





